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United States
Circuit Court of Appeals
For the Ninth Circuit.

Transcript of Record.
(IN THREE VOLUMES.)

PACIFIC COAST COMPANY, a Corporation,
Appellant,
vs.

GEORGE E. JAMES and EDWARD WEBSTER,
Appellees.

VOLUME I.
(Pages 1 to 288, Inclusive.)

Upon Appeal from the United States District Court
for the District of Alaska, Division No. 1.

Filed

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F. D. Monckton,
Clerk.

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Circuit Court of Appeals

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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[Names and Addresses of Attorneys of Record.]
SHACKLEFORD & BAYLESS, Attorneys for
Appellant.

Address: Juneau, Alaska.

GUNNISON & ROBERTSON, Attorneys for Ap-
pellee.

Address: Juneau, Alaska.

*In the District Court for the District of Alaska,
Division No. One, at Juneau.*

No. 1024-A.

PACIFIC COAST COMPANY, a Corporation,
Plaintiff,

vs.

GEORGE E. JAMES and EDWARD WEBSTER,
Defendants.

Complaint.

Comes now the above-named plaintiff and for
cause of action and complaint against the defendant
alleges:

I.

That the Pacific Coast Company is a corporation
duly organized and existing.

II.

That on the 6th day of March, 1881, M. W. Murry,
being a citizen of the United States over the age of
twenty-one years and a resident of Juneau, Alaska,
entered upon, located and claimed and entered into
the actual possession of a certain piece or parcel of

land, the same being unappropriated vacant land and being free and open to location and appropriation, which said piece of land is described as follows:

Located, lying and being about one-eighth of a mile east of the town of Harrisburg, now Juneau, Alaska, the center line being marked by a blazed tree and notice and a large boulder near low-water mark in line S. 25° W. The magnetic courses and distances are as follows: Commencing at a stake and mound of stone about one-eighth of a mile easterly from the town of Juneau from Gastineau Channel, thence First, N. 25° E. 600 feet; thence, Second, 65° E. 600 feet E.; Third, 25° W. 600 feet to stake and mound of stone at low-water mark; thence, Fourth, N. 65° W. 600 feet along the water line to the place of beginning, all of which said land borders and abuts upon Gastineau Channel, a navigable arm of the North Pacific Ocean, in the said District of Alaska; that the said land was located by the said M. W. Murray and improved and that [1*] the said M. W. Murray and his successors entered into the possession of the same and have been in the actual, notorious, exclusive and continuous (adverse) RWJ. possession (under color and claim of title for more than seven years) of the same since the 6th of March, 1881, and that the said block of land is known as the Carroll-Murray Wharfsite in the town of Juneau and occupies a frontage of 600 feet along the low-water mark of the said town of Juneau, including the tide-lands from said low-water mark to the upland abutting thereon, and includes

*Page-number appearing at foot of page of original certified Record.

the upland abutting thereon.

III.

That by mesne conveyances from the said M. W. Murray this plaintiff is now the owner of and in possession of the said described property, including the water front above described and out to the deep water of Gastineau Channel; that the said plaintiff and its immediate grantors have been since the sixth of March, 1881, in the open, notorious and continuous possession of each and all of the said lands and occupying the same and exercising domain over the tide-lands above described and over the right of way out to deep water aforesaid since said date; and the said lands lie immediately in front of blocks O, P, Q, R, S and T in the townsite of Juneau and that the said plaintiff is the owner of and in possession of the said Blocks O, P, Q, R, S and T in the said townsite of Juneau.

IV.

On or about the 15th day of August, 1913, the defendants above named with a gang of men and piles entered upon the property above described and with a pile-driver upon the lands and premises of this plaintiff in front of blocks O, P, Q, R, S and T and upon the ground so occupied and claimed by the predecessors in interest of this plaintiff on and prior to the 17th day of May, 1884, and began the erection of a series of posts or piles, beginning immediately in front of Blocks R, S and T, and are continuing to drive the said piles and posts with said gang of men and threaten to take possession and control of all of the tide-lands so owned and occupied by this plain-

tiff since the 6th of March, 1881, and [2] under the provisions of the Act of Congress of May 17, 1884, and threaten to obstruct plaintiff's right of way out to deep water in said channel and threaten to further construct upon said piling and posts after capping the same, a platform and wharf, and will occupy and possess and control all of the waterfront in front of Blocks R, S and T in the said townsite of Juneau and thus deprive the plaintiff of the use and occupancy of the said waterfront property for the purposes mentioned herein and completely obstruct and shut the plaintiff out of the said property and exclude it from the same and from its right of way to deep water of Gastineau Channel.

V.

That all of said acts and threatened acts and doings of said defendants are against the will and consent of the plaintiff and that plaintiff has notified the defendants of its rights in the premises and to refrain from doing and committing the wrongs complained of herein, and requested the defendants to refrain from further prosecution of said work and no further to trespass upon plaintiff's property, but defendants still persist in the said wrongful things and will still continue the work and improvements aforesaid unless restrained by this Honorable Court, and with the said acts and matters complained of herein and placing the said obstructions upon the property of the plaintiff, as herein indicated, and will render the same valueless and useless, all to the great and irreparable damage of this plaintiff, and that the plaintiff has no plain, speedy and adequate

or complete remedy at law, and that the plaintiff has good reason to believe and does believe that unless the defendants are restrained from the acts and things now being committed and those threatened and contemplated that they will continue said work so undertaken to completion, and if any further notice is served upon the defendants of the application for an injunction by this plaintiff, before this plaintiff can obtain any relief by and through this Honorable Court the said defendants will have succeeded in rendering valueless the property of this plaintiff, and that the doings of the defendants are contrary to equity and good conscience and that the [3] defendants threaten to and will continue a series of trespasses upon the property herein described and that only by an action in equity before this Court for an injunction can a multiplicity of suits be avoided.

WHEREFORE, plaintiff prays:

1. That a temporary restraining order and injunction issue out of this Court restraining and enjoining the defendants during the pendency of this action from doing the things and matters complained of herein and from placing piling, posts, mudsills or capping in front of the property of the plaintiff and particularly in front of Blocks R, S and T of Juneau townsite and within the boundaries of the location of the said M. W. Murray made on the 6th day of March, 1881, and hereinbefore referred to;

2. That upon final hearing herein the defendants be perpetually restrained from committing the wrongs herein complained of and that the temporary

restraining order herein be made perpetual and for such other and further relief as to the Court may seem just and equitable in the premises, and for plaintiff's costs and disbursements expended herein.

SHACKLEFORD and BAYLESS,

Attorneys for Plaintiff.

United States of America,

District of Alaska,—ss.

Lewis P. Shackelford, being first duly sworn, on oath deposes and says: I am the Attorney of the Pacific Coast Company, the plaintiff herein, at Juneau, Alaska, and make this verification on account of and for the plaintiff; that I have read the foregoing bill of complaint, know the contents thereof and the same is true; that I make this verification for the reason that the officers of the said company are out of the District of Alaska.

LEWIS P. SHACKLEFORD.

Subscribed and sworn to before me this 15th day of August, 1913.

[Seal]

W. S. BAYLESS,

Notary Public for Alaska.

My commission expires Dec. 10, 1913.

[Endorsed]: Filed in the District Court, District of Alaska, First Division. Aug. 15, 1913. E. W. Pettit, Clerk. [4]

[Endorsed]: Original. No. ——. In the District Court for the District of Alaska, Division No. 1, at Juneau. Pacific Coast Company, a Corporation, Plaintiff, vs. George E. James and Edward Webster, Defendants. Complaint. Shackelford and Bay-

less, Attorneys for Plaintiff. Office: Juneau,
Alaska. [5]

*In the District Court for the Territory of Alaska,
Division No. One, at Juneau.*

No. 1024-A.

PACIFIC COAST COMPANY, a Corporation,
Plaintiff,

vs.

GEORGE E. JAMES and EDWARD WEBSTER,
Defendants.

Answer of Defendant Edward Webster.

Comes now Edward Webster, one of the defendants above named and answering plaintiffs' complaint herein, alleges:

I.

That he neither has nor claims to have any right, title or interest, or claims of right, title or interest in, or to the property described in the complaint herein, and that the pile driver operated by him was placed upon the tide-lands in front of Blocks S and T mentioned in said complaint, for the purpose of driving piling for George E. James, the occupant and claimant, as this defendant is informed and believes, of the tide-lands in controversy here.

WHEREFORE the defendant, Edward Webster, prays that said action be dismissed as against him, that he be permitted to go hence and that he have his costs and disbursements herein and such other and

further relief in the premises as to the Court may seem just and equitable.

EDW. WEBSTER,

Defendant.

United States of America,
Territory of Alaska,
Division No. One,—ss.

Edward Webster being duly sworn, deposes and says: [6] That he is one of the defendants above named and is the defendant described in the above answer; that he has read over the same and knows the contents thereof; that the same is true except as to those matters therein alleged to be stated on information and belief, and as to those matters he believes it to be true.

EDW. WEBSTER.

Subscribed and sworn to before me this 20th day of August, 1913.

[Seal]

R. E. ROBERTSON,

Notary Public in and for the Territory of Alaska.

My commission expires June 19, 1917.

[Endorsed]: In the District Court for the Territory of Alaska, Division No. One. Pacific Coast Company, Plff., vs. George E. James et al., Defts. No. 1024-A. Answer of Defendant, Edward Webster. Gunnison & Robertson, Attorneys-at-law, Juneau, Alaska. Filed in the District Court, District of Alaska, First Division. Aug. 20, 1913. E. W. Pettit, Clerk. By H. Malone, Deputy. [7]

*In the District Court for the Territory of Alaska,
Division No. One, at Juneau.*

Court No. 1024-A.

PACIFIC COAST COMPANY,

Plaintiff,

vs.

GEORGE E. JAMES and EDWARD WEBSTER,
Defendants.

Answer [of Defendant George E. James].

Comes now George E. James, one of the defendants above named, and for answer to plaintiff's complaint herein, admits, alleges and denies as follows:

I.

Answering the first paragraph of said complaint, alleges that he has no knowledge or information sufficient to form a belief as to the truth of all and singular the allegations therein contained and therefore DENIES the same.

II.

Answering the second paragraph of said complaint, defendant ADMITS that the portion of the land described in said second paragraph of said answer, to wit: All that portion below the line of mesne high tide, was on March 6, 1881, vacant and unappropriated land and free and open to appropriation and location; DENIED that said land so described in the said complaint was located by the said M. W. Murry and improved; DENIES that the said M. W. Murry and his successors or the said Murry or his success-

ors or any of them ever entered into the possession of said land; DENIES that the said M. W. Murry and his successors or the said M. W. Murry or his successors or any of them have been in the actual, notorious, exclusive or continuous possession [8] of the said land since March 6, 1881, or at all; ALLEGES that he has no knowledge or information sufficient to form a belief as to the truth of all and singular the allegations therein contained and not herein specifically admitted or denied; and therefore DENIES the same and each and every allegation thereof.

III.

Answering paragraph three of said complaint, the defendant DENIES that this plaintiff is now or at any time has been the owner and in possession of the premises, described in said complaint, including the waterfront above described and out to the deep water of Gastineau Channel or any part or portion thereof; DENIES that plaintiff and its immediate grantors were on the 6th day of March, 1881, or at any time since said day, have been in the open, notorious and continuous possession of each and all of said lands or any part or portion thereof; DENIES that the said plaintiff and its immediate grantors or any of them did on March 6, 1881, occupy, or at any time since said date have occupied the said land and exercised domain over the lands above described or any part thereof; DENIES that the said plaintiff and its immediate grantors or any of them were in the open, notorious and continuous possession and occupying and exercising domain over the right of way out to

deep water over and across the tide lands aforesaid on the 6th day of March, 1881, or at any time since said day; ADMITS that the tide lands above described lie immediately in front of Blocks O, P, Q, R, S and T of the Townsite of Juneau; ALLEGES that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in said third paragraph and not herein specifically admitted or denied, and therefore DENIES the same and each and every allegation thereof. [9]

IV.

Answering paragraph number four of said complaint, ADMITS that on or about the 15th day of August, 1913, defendant with a gang of men and with piles and a pile-driver, began the repair and alteration of certain structures upon that portion of the lands and premises described in the said complaint, to wit:

That certain tract of tide land about one hundred thirteen (113) feet in length extending along the westerly side of Franklin Street and from the said westerly side of Franklin Street, out to the deep and navigable water of Gastineau Channel, situate in front of, but not abutting upon Lots 1 and 2, of Block T, and the southerly thirteen (13) feet of Lot 1 of Block S, in the Townsite of Juneau; BUT defendant alleges that he was then and there and at all times since the 15th day of April, 1900, has been and now is in the open, notorious, exclusive, undisturbed, and continuous possession, use and occupancy of the said tide-lands last above described, and during all of said times, has used, occupied and possessed the

same; DENIES that he went upon any part of the lands or premises of the plaintiff herein; DENIES that the lands and premises upon which he commenced the repairs and alterations as aforesaid, were the lands and premises of this plaintiff or that this plaintiff has any right, title or interest thereto or therein; ADMITS that said structures upon which he commenced the repairs and alteration as aforesaid, were upon the tide lands between Block T, and the southerly portion of Block S, and the deep and navigable waters of Gastineau Channel; DENIES that the ground upon which he was as aforesaid was occupied or claimed by the plaintiff or its predecessors in interest prior to May 17, 1884; DENIES that he threatens or intends to take possession and control of all or any of the [10] tide land owned and occupied by the plaintiff since March 6, 1881; DENIES that the plaintiff or its predecessors has, or at any time had, any interest in the premises hereinabove described under the provisions of the Act of May 17, 1884; DENIES that defendant did on the 15th, day of August, 1913, or at any other time threaten or attempt to obstruct plaintiff's right of way out to the deep and navigable waters of said channel; DENIES that plaintiff and its grantors or plaintiff or its grantors, now or ever has had any right of way out to the deep water of Gastineau Channel upon, over and across the herein described premises; DENIES that plaintiff or its grantors, or its predecessors in interest are now or ever have been in possession of the said herein described premises or any part or portion thereof; DENIES all and sin-

gular the allegations in paragraph four not specifically admitted or denied.

V.

Answering paragraph five of said complaint, defendant DENIES that plaintiff has any right, title or interest in or to the said herein described lands so claimed, occupied and possessed as aforesaid by this defendant, or that plaintiff has *any* right to pass over, through or upon said lands for any purpose whatever; ALLEGES that defendant is now and at the time of the commencement of this action, was, and at all times since the 15th day of April, 1900, has been in the open, notorious, exclusive, undisturbed and continuous use, occupancy and possession of the said tide lands herein described; DENIES all and singular the allegations of the said paragraph five not herein specifically admitted or denied.

AND for a further separate and affirmative answer and defense herein, defendant ALLEGES as follows, to wit: [11]

I.

That on or about the 15th day of April, 1900, this defendant, being a citizen of the United States, over the age of twenty-one years and a resident of the Territory of Alaska, entered upon, located and claimed, and entered into the use, occupancy and possession of, that certain piece of tide land, lying between the upland and the deep and navigable waters of Gastineau Channel, which said premises so entered upon, located and claimed by defendant as

aforesaid, and into the use, occupancy and possession of which defendant then and there entered as aforesaid, extended along the line of mesne high tide a distance of about one hundred (100) feet in front of Lots 1 and 2, of Block T, and thirteen (13) feet in front of the southerly thirteen (13) feet of Lot 1, in Block S, of the Townsite of Juneau, making a total frontage of about one hundred thirteen (113) feet, and extended from said line of mesne high tide out to the deep and navigable waters of Gastineau Channel, and that at the time the said defendant went upon, located and claimed and entered into the use, occupancy and possession of the said tidelands, the same were vacant, unused, unoccupied and unappropriated lands of the United States and were free and open to location use, occupancy and appropriation.

II.

That after locating, claiming and entering upon and into the occupancy and possession of said lands as aforesaid, this defendant proceeded to and did improve said premises for the purpose of rendering the same suitable as a place for loading and unloading and discharging rafts, scows, barges and other craft; that defendant has ever since been, and now is in the open, notorious, exclusive, continuous and undisturbed possession, use and occupancy of said land and has used the said premises as a [12] landing place for scows, barges, gasolene and steamboats and other craft and has at various times discharged lumber, gravel and other building supplies and materials upon and over and across said premises from

such craft; that in the year 1906, and thereafter, defendant further improved the said premises by the erection and construction thereon of certain substantial, permanent structures, to wit: a gridiron for the purpose of receiving there on lumber and other building materials discharged from craft as aforesaid, and has erected and constructed and caused to be erected and constructed upon said premises, an approach or roadway from said Franklin Street to said gridiron, for the purpose of giving access from the street to the same for teams and conveyances.

III.

That this defendant, his agents, servants and employees have continuously and almost daily used and occupied said tract and have been in the open, notorious, exclusive, continuous and undisturbed use, possession and occupancy of said tract of land, using the same for the purpose of docking, lighterage, loading, unloading and discharging scows, boats and craft, and for laying up boats, scows and other craft for repair and for other purposes, since the 15th day of April, 1900.

IV.

That prior to the commencement of this action, plaintiff, by various certain formal conveyances, deeded to the Town of Juneau, and dedicated to said town and the public as a public street, road, or highway, a strip off the westerly portion of Blocks R, S and T, abutting upon the line of mesne high tide and further, dedicated other portions of said lots

and blocks as public streets, roads and alleys; that said conveyances and [13] dedications have been accepted by said town; that by said acts, the said plaintiff cut off, abandoned and parted with, and divested itself of any and all littoral and riparian rights, if any it ever had, and any right or privilege of access to or from deep water from the said upland across the tide lands herein described, and thereby estopped itself from claiming any such right, title or interest in or to or right of access across, said herein-described tide lands.

V.

Upon information and belief, that prior to the commencement of this action, this plaintiff attempted to and did part with, and did sell and convey to other persons, not parties to this action any and all right, title and interest in the tide lands and other lands described in said complaint and herein described, of which said plaintiff, in said complaint, alleges itself to be the owner, and that plaintiff is not now and was not at the time of the commencement of this action, the real party in interest, it having theretofore parted with and divested itself of whatever right or claim of right to, or interest in, the said property it may, at any time, have pretended or claimed to have had therein.

VI.

That, on or about the 17th day of August, 1913, while a temporary restraining order, made and entered theretofore by this Court, was in force and effect, restraining and enjoining this defendant

pendente lite from driving piles or erecting structures or otherwise interfering with plaintiff on said tract, plaintiff and its agents, servants and employees acting, by, through and under it, employed a piledriver with a crew of men to go upon said tract, and attempted and threatened to drive piles upon said herein described tide lands immediately in front of the defendant's [14] structures thereon, and attempted and threatened to block and cut off defendant's right of access to and from his said structures, from and to the deep and navigable waters of Gastineau Channel and to render the said premises useless to defendant, and that plaintiff will, unless restrained by this Honorable Court, drive piles and erect other structures in front of defendant's said tide lands and defendant's said structures, thereon situated, and upon defendant's said land, and will cut off and deprive this defendant of his right of access over and across said tide lands to and from his said structures, from and to the deep and navigable waters of Gastineau Channel, and will render said tide lands and the structures thereon erected at great cost to defendant, useless and of no value to defendant, and deprive defendant of the use thereof, and threatens to and will irreparably damage and injure this defendant unless restrained from doing the acts and things threatened as aforesaid.

WHEREFORE, defendant prays:

First: That plaintiff take nothing by this action;

Second: That until the final hearing of this proceeding, plaintiff, its agents, servants, and employees be restrained and enjoined from in any way in-

terfering with or disturbing defendant's possession, use and occupancy of said tract of land, and from placing piling, posts, dolphins, mudsills, wharves or other structures, or mooring boats, scows, barges, or other vessels or craft, in front of or upon the said property of this defendant, described in this answer.

Third: That upon final hearing herein, defendant be adjudged to be the owner and in possession and entitled to the possession of said premises and that said temporary restraining order be made permanent. [15]

Fourth: That defendant have his costs and disbursements herein.

Fifth: That defendant have such other and further relief as may be just and equitable in the premises.

GUNNISON & ROBERTSON,

Attorneys for Defendant, George E. James.

United States of America,

Territory of Alaska,

Division Number one,—ss.

George E. James, being first duly sworn on oath, deposes and says that he is one of the defendants in the above-entitled action; that he has read over the foregoing answer and knows the contents thereof and that the same are true, except as to matters herein alleged to be stated upon information and belief and as to those matters, he believes it to be true.

GEORGE E. JAMES.

Subscribed and sworn to before me this 28th day of March, 1914.

[Notarial Seal] ROYAL A. GUNNISON,
Notary Public in and for the Territory of Alaska.

My commission expires on the 10th day of May, 1917.

[Endorsed]: Court No. 1024—A. In the District Court for the Territory of Alaska, Division No. One, at Juneau. Pacific Coast Company, Plaintiff, vs. George E. James and Edward Webster, Defendants. Answer. Gunnison & Robertson, Attorneys at Law, Juneau, Alaska. Receipt of copy and due service of the within answer admitted this 28th day of March, 1914. Shackleford & Bayless, Attorney for Plaintiff.

Filed in the District Court, District of Alaska, First Division, Mar. 28, 1914. J. W. Bell, Clerk. By ———, Deputy. [16]

*In the District Court for the Territory of Alaska,
Division No. 1, at Juneau.*

No. 1024—A.

PACIFIC COAST COMPANY,

Plaintiff,

vs.

GEORGE E. JAMES and EDWARD WEBSTER,
Defendants.

Reply.

I.

The plaintiff replying to the allegations set out in

defendant's further, separate and affirmative answer and defense herein, denies all and singular the allegations contained in paragraphs I, II and III.

II.

Referring to paragraph IV of said affirmative defense set out in said answer, the plaintiff admits that it deeded to the City of Juneau a certain strip of ground from the westerly portion of Blocks R, S and T, and further admits that it conveyed certain portions of said lots and blocks as public streets, roads and alleys; that said dedications have been accepted by the town, but denies each and every other allegation of fact contained in said paragraph.

III.

Referring to paragraph V of said affirmative defense set out in said answer, plaintiff denies each and every allegation therein contained.

IV.

Referring to paragraph VI of said affirmative defense set out in said answer, the plaintiff admits that on or about August 17, 1913, while a temporary restraining order made and entered theretofore by this Court was in force and effect, restraining and enjoining the [17] defendants pendente lite from driving piles or erecting structures or otherwise interfering with plaintiff on said tract; that the plaintiff and its agents, servants and employees acting by, through and under it, employed a pile-driver with a crew of men to go upon said tract and attempted to drive piles upon said herein-described tide lands immediately in front of the structures occupied by the

defendant thereon and attempted to and threatened to block and cut off defendants' alleged right of access to and from the said structure from and to the deep and navigable waters of Gastineau Channel and to render the said premises useless to the defendant; admits that plaintiff will, unless restrained by this Honorable Court, drive piles and erect other structures upon the said strip of tide lands claimed to be owned by defendants and in front of the grid-iron occupied by the defendants situated thereon and will cut off and deprive the defendants of their alleged right of access over and across said tide lands to and from said structures from and to the deep and navigable waters of Gastineau Channel; admits that it will render said tide lands and structures thereon alleged to have been erected by defendants useless and of no value to the defendants and deprive defendants of the use thereof, but denies that it will irreparably damage and injure the defendants by said acts.

WHEREFORE, plaintiff prays:

1. That the defendants be perpetually restrained from committing the wrongs herein complained of and from placing piling, posts, mudsills or capping in front of the property of this plaintiff and particularly in front of Blocks R, S and T of the Juneau townsite and within the boundaries of the location of the said M. W. Murray made on the 6th day of March, 1881, and in any way interfering with or disturbing the plaintiff's possession, use and occupancy of said tract of land. [18]

2. That the plaintiff be adjudged to be the owner of and entitled to the possession of the said premises herein described.

3. That the plaintiff have of and from the defendants its costs and disbursements herein laid out and expended, and such other and further relief as to the Court may seem just and equitable in the premises.

SHACKLEFORD & BAYLESS,

Attorneys for Plaintiff.

United States of America,

District of Alaska,—ss.

S. H. Ewing, being first duly sworn, on oath deposes and says: I am the agent of the Pacific Coast Company, the plaintiff herein, at Juneau, Alaska, and make this verification on account of and for the plaintiff; that I have read the foregoing reply, know the contents thereof and the same is true; that I make this verification for the reason that the other officers of the said company are without the District of Alaska.

S. H. EWING,

Subscribed and sworn to before me this 17th day of July, 1914.

[Seal]

W. S. BAYLESS,

Notary Public for Alaska.

My commission Expires Dec. 22, 1917.

[Endorsed]: Original No. 1024-A. In the District Court for the district of Alaska, Division No. 1, at Juneau. Pacific Coast Company, Plaintiff, vs. George E. James and Edward Webster, Defendants.

Reply. Shackleford & Bayless, Attorneys for Plaintiff. Office, Juneau, Alaska. Due service of a copy of the within is admitted this 17th day of July, 1914. Gunnison & Robertson, Attorneys for Deft., Geo. E. James. Filed in the District Court, District of Alaska, First Division. Jul. 18, 1914. J. W. Bell, Clerk. By J. T. Reed, Deputy. [19]

*In the District Court for the District of Alaska,
Division No. One.*

No. 1024—A.

PACIFIC COAST COMPANY, a Corporation,
Plaintiff,

vs.

GEORGE E. JAMES,
Defendant.

Memorandum of Decision.

JENNINGS, Judge:

In 1881 a man by the name of M. W. Murry filed a location notice, as follows:

(Copy)

Shortly afterward the miners in and around Juneau passed a resolution approving the location.

In 1881 the construction of a wharf was begun and in 1882 the wharf was completed.

There is no evidence that Murry built the wharf or had anything to do with its building, or that any consent from Murry was obtained. In fact, Murry seems to have vanished for several years, and it was only in 1898 that plaintiff acquired whatever rights Murry had, if indeed he had any.

Certain it is, however, that in 1882 the plaintiff went into use and occupation of the wharf, and in the absence of any evidence to the contrary, it must be presumed that plaintiff owned said wharf and used and occupied, that is possessed it, in its own right. The wharf was built in the shape of a T, the stem of which was ——— feet extending from the upland to deep water a distance of ——— feet, with a face at deep water, [20] The plaintiff was engaged in the transportation business between Seattle and Juneau, and was operating such steamers as the Idaho, the Ancon, the Queen, etc. The steamers operated by the company were much too long for the face of the dock, so that it was necessary, in rough weather, while a vessel was to lie at the face of the dock, to moor the bow and stern of the vessel by lines running therefrom to the shore. Whether these lines were fastened to stumps or boulders on the shore, or to a pile at low water, the evidence is not very satisfactory, but I think it is clear that a space of at least 250 to 300 feet on each side of the center line of the wharf was a necessary adjunct to the use and enjoyment of the wharf as a landing place for such vessels as were operated by the plaintiff.

In 1892 the plaintiff built another wharf nearer the Town of Juneau—in fact, in the town—and from 1894 landed its vessels, entirely, at this new wharf. The evidence is that only one of plaintiff's vessels—to wit, the Alki—was docked at the old wharf after 1894. The Alki docked there in 1895. But there is no evidence that she was moored by bow or stern

lines running to the shore——fastened upon or over the property in dispute. The old wharf was allowed to fall into unrepair and disuse—the structures near the upland were converted into a sardine factory, a glove factory, a tenement house. There is no evidence that after the plaintiff moved to the new wharf it used or occupied the premises in dispute for any purpose whatsoever.

In 1894 then the plaintiff ceased to use or occupy, for any purpose whatsoever, any part of the tide lands in controversy. A period of six years now elapses during which the said tide lands remained in a state of nature—no improvements thereon—no occupancy—no sign of occupancy—no use made of them by any one—no act of ownership performed by anyone. There is no evidence [21] that the plaintiff renounced its claim, i. e., it did not say in words: “I no longer claim,” but there is every evidence that it abandoned, forsook, ceased to use, improve, or care for the tide land.

What then was the legal status in 1900 of the tide land in controversy?

Plaintiff claims that it then belonged to them. The basis of plaintiff’s claim is this:

(a) Plaintiff claims that the land in dispute belonged to it because by the Act of May 17, 1884, it was provided that Indians or others should not be disturbed in the possession of lands then in their actual use or occupation or claimed by them.

One may use or occupy lands and yet not claim them; one may claim lands and yet not use or occupy them. I think the last “or” in that statute must be

read as “and,” for certainly it is unthinkable that Congress intended that a person was ever afterward to be protected, on account of the fact that in 1884 he claimed a piece of land. In the case of *Sutter v. Heckman*, 1 Alaska, 199–200, Judge Brown, formerly of this court, said:

“It is believed that the language used in the Act of Congress of May 17, 1884, ‘used or occupied,’ limits the following words, ‘or claimed by them’ used in the same connection. Clearly, Congress never intended that an Indian or white man might say to his neighbors, ‘I claim a hundred thousand acres, or a million acres, or any other amount of land, between certain boundaries or natural land marks, as my individual property,’ and that such a claim would be protected by said acts, and made sacred to the rights of the claimant as a property right.”

Thus construing the word “or,” the statute would read: “Indians and other persons shall not be disturbed in the possession of lands in their use or occupation and claimed by them.”

But the statute is simply a prohibition against any one disturbing the possession if any such possession exists; it is not a prohibition against the aliening or transferring that possession—nor against abandoning it. In the case last cited [22] the Circuit Court of Appeals for the Ninth Circuit held that the right under the Act of 1884 could be conveyed. If it could be conveyed, it could be abandoned, for an abandonment of possession is in effect a conveyance

not to any specific person, but to all the world.

In *Carroll v. Price*, 81 Fed. 143, Judge Delaney, formerly of this court, virtually construed the statute in the same way in his instructions to the jury. Carroll, in that case, claimed under the Act of 1884, but the charge was:—

“If you find from the evidence that the plaintiff and his grantors have been in the continuous occupancy and possession of the tract located by Powers in 1881 * * * . On the other hand, if you find that the plaintiff did not have such possession, or that the ground was unoccupied, unpossessed, and unimproved public land when Price took possession of it in 1895, then he had the right to go on, locate and occupy it, and the defendants, and his grantees, are entitled to your verdict.”

In 1884 plaintiff had use, occupation and claim of the tide land in controversy, but after 1894 it did not continue the use or occupation of the tide land in controversy. How, then, was it possessed of any right to keep others off?

Plaintiff contends that it had color of title, and being in *foot* possession of the tide land covered by the wharf, it had constructive possession to the limits of the paper title. As a proposition of law, this may be conceded, and that leads to the inquiry: “Did plaintiff have color of title?”

It is claimed that plaintiff’s color of title was this, to wit: The location notice filed in the office of the U. S. Commissioner at Juneau on the — day of

———, by M. W. Murry. The answer to this is twofold—

(I) There is no evidence that prior to 1898 they claimed under or had anything to do with Murry.

(II) If Murry were but a trustee for them so that the location notice is really their location notice, yet a location notice is not color of title. [23]

Color of title is that which purports to be title, but is no title. It is not title, but only the semblance of title. It must be in form a conveyance of title. One cannot make his own color of title. A location notice is not a conveyance—it is a mere claim.

In 1900 defendant went upon the tide land, cleared it of boulders and commenced to use it as a landing place for rafts, and scows, and ever since said year has been so using it without let or hindrance from plaintiff—improving it from time to time.

During all this time plaintiff has neither used nor occupied the tide land in question, except that it collected some rent from Receiver Davidson, and permitted one Messerschmidt to land some wood there and has paid taxes. This is insufficient. The permission to Davidson and Messerschmidt is on a par with the proposition of the tramp to the slow-witted person that the former would give the latter one-half of all the logs floating down the Yukon past Dawson which the latter might catch, while as to the payment of taxes, that is only a circumstance evidencing a bare claim—it evidences neither use nor occupation.

(89 P. R. 417—Oreg.; 66 P. R. 923—Oreg.)

As to the claim of plaintiff that defendant is pre-

venting or interfering with his access from the uplands, the proof is substantially like that in the case of McCloskey v. Pacific Coast Co. Whatever littoral rights plaintiff may once have had have been cut off by conveyances and by the street.

Findings and decree for defendant.

[Endorsed]: No. 1024-A. In the United States District Court for the District of Alaska, Division No. One. Pacific Coast Company, a Corporation, Plaintiff vs. George E. James, Defendant. Memorandum of Decision. Filed in the District Court, District of Alaska, First Division. Oct. 26, 1914. J. W. Bell, Clerk. [24]

In the United States District Court, for the District of Alaska, Division No. One, at Juneau.

No. 1024—A.

PACIFIC COAST COMPANY, a Corporation,
Plaintiff,

vs.

GEORGE E. JAMES and EDWARD WEBSTER,
Defendants.

Findings of Fact and Conclusions of Law.

This matter having come on, on July 17, 1914, before the above-entitled court, the Honorable Robert W. Jennings, Judge thereof, presiding, for trial by the said Court without a jury, the defendant, Edward Webster, in his answer theretofore filed herein having waived any and all claim of any right, title or interest in the premises in controversy, and the

said plaintiff, the Pacific Coast Company, a corporation, having appeared by its attorneys, Shackelford and Bayless, and the said defendant, George E. James, having appeared by his attorneys Gunnison and Robertson, and the Court, on said 17th day of July, 1914, and succeeding days, having heard all the evidence, and the proofs adduced by said plaintiff and said defendant, respectively, and at the conclusion of the taking of said evidence and proof, having heard argument of counsel, took said matters under advisement until the 26th day of October, 1914, when being fully advised in the premises, it rendered its written decision and now hereby finds from [25] the evidence as facts herein as follows, viz:

I.

That on the 15th day of April, 1900, the premises in controversy in this suit, to wit:

A certain tract of tide land in the town of Juneau, Alaska, being 113 feet along the line of mean high tide in front of lots 1 and 2, block T, and part of lot 1 in block S, as follows: That is to say, the full width of lots 1 and 2, block T, being 100 feet more or less, and the 13 feet of lot 1 in Block S, which is contiguous to said 100 feet, and extending from said line of mean high tide the full width of said 113 feet out to the navigable waters of Gastineau Channel, an arm of the North Pacific Ocean,

was vacant, unused, unoccupied, unappropriated land of the United States.

II.

That on said date defendant George E. James, being then a citizen of the United States and a resident of Alaska, claimed, took possession of and entered into the use, occupation and enjoyment of said tract, and improved same by clearing the same of driftwood and boulders, and rendering it suitable as a place for loading and unloading, repairing and otherwise handling rafts, lighters, boats, scows, barges and other craft, and began and, until the commencement of this suit continued, to use and occupy the same in and for said purposes, and in connection with the lumber and sawmill business then and at all times since conducted by him. That in the year 1906, and again in 1908, 1911 and 1912, said defendant made and constructed another and other improvements upon said premises and erected thereon permanent structures, to wit, gridirons, platforms, and approaches from the street to said platforms and gridirons, to facilitate the said purposes for which said premises were used and occupied by him, which said use, occupation and claim have at all times been open, notorious, continuous [26] and without let, hindrance or interruption until the doing of the matters and things complained of in the answer herein.

III.

That on or about the 17th day of August, 1913, plaintiff, Pacific Coast Company a corporation, without right, and against the will and consent of said defendant, entered upon the said tract, and began, and threatened to continue, and unless restrained

by law will continue, to drive piles and erect structures in front of, that is, on the seaward side of the structures and improvements of the defendant in such a manner as to block and cut off said defendant's access and communication between his said structures and the deep and navigable waters of Gastineau Channel and in such manner as to render said premises valueless and useless to said defendant for the purposes aforesaid.

IV.

That said acts and threatened acts of plaintiff do and will constitute a continued trespass, and will cause defendant irreparable loss and damage, for which he will have no adequate remedy at law, and will render the premises in controversy useless and of no value to defendant for the uses and purposes for which he, said defendant, originally appropriated and used the same and for which he has since used the same.

V.

That at the time of the acts complained of by plaintiff, and at the time of the commencement of this suit, plaintiff was the owner of said lots R, S and T, but that a long time prior to the commencement of this action, by various certain formal conveyances and instruments, it deeded and dedicated to the municipality known as the town of Juneau, and to the [27] public use, as a public street and highway, a certain strip of upland, being the westerly portion of said lots 1 and 2, in block T, and of lot 1 in Block S, which said portions so deeded and dedicated abutt upon the line of mean high tide of the

waters of said Gastineau Channel and that said plaintiff also deeded and dedicated to said town, certain other portions of said lots 1 and 2, in block T, and of lot 1 in Block S, as public streets and alleys; that said upland so deeded and dedicated to said town and the public use, as public streets, highways and alleys, was duly accepted by said town for said purposes and for a long time theretofore was, and at all times thereafter has been, used as such public streets, highways and alleys by the general public, and that since said dedications and use plaintiff has not been, and is not now, the owner of any upland upon which the tideland in controversy abutts.

And from the foregoing facts found, the Court draws the following:

CONCLUSION OF LAW.

I.

That defendant George E. James is entitled to a decree adjudging him to be the owner of said tract of tideland and enjoining plaintiff from in any manner interfering with the full enjoyment and use by defendant of his said property.

Done in open court this 27th day of January, 1915.

ROBERT W. JENNINGS,

Judge.

[Endorsed]: Original. No. 1024-A. In the United States District Court for the District of Alaska, Division No. One. Pacific Coast Company, a Corporation, Plaintiff, vs. George E. James and Edward Webster, Defendants. Findings of Fact and Conclusion of Law. Filed in the District

Court, District of Alaska, First Division. Jan. 27, 1915. J. W. Bell, Clerk. By C. Z. Denny, Deputy.
[28]

*In the District Court for the Territory of Alaska,
Division No. One, at Juneau.*

No. 1024—A.

PACIFIC COAST COMPANY, a Corporation,
Plaintiff,

vs.

GEORGE E. JAMES and EDWARD WEBSTER,
Defendants.

Judgment.

This cause came on on the 17th day of July, 1914, at this term in the above-entitled court, the Honorable Robert W. Jennings, Judge thereof, presiding, to be heard by the Court, without a jury, upon the complaint as amended, the answer of the defendant, George E. James, and the reply, and the testimony and proofs in the cause, and the cause having been argued by respective counsel for plaintiff and for George E. James, one of the defendants, the other defendant, Edward Webster, having filed herein a disclaimer of any right, title or interest or claim thereof, of, in or to the premises in controversy, and the Court having taken the matter under advisement, and thereafter and on the 26th day of October, 1914, and at this term of this Court being fully advised in the premises, having rendered his

decision of the cause in writing in favor of the defendant George E. James, and having at this term on to wit, the 27th day of January, 1915, made and filed herein its Findings of Fact and Conclusion of Law.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED— [29]

I.

That plaintiff take nothing by his complaint in this action, and that the temporary restraining order heretofore issued out of this court on plaintiff's application be, and the same is hereby discharged

II

That George E. James, defendant in this action, is the owner and entitled to the possession of that certain tract of tide land, situate in the town of Juneau, Alaska, and more particularly described as follows:

A certain tract of tide land in the town of Juneau, Alaska, being 113 feet along the line of mean high tide in front of lots 1 and 2, block T, and part of lot 1 in Block S, as follows: that is to say, the full width of lots 1 and 2, block T, being 100 feet more or less, and the 13 feet of lot 1 in block S, *which contiguous* to said 100 feet, and extending from said line of mean high tide the full width of said 113 feet out to the navigable waters of Gastineau Channel, an arm of the North Pacific Ocean.

III.

That the plaintiff, Pacific Coast Company a corporation, be, and it is hereby restrained and en-

joined from asserting any right, title or interest in or to said premises, or any part thereof.

IV.

That said Pacific Coast Company, a corporation, plaintiff herein, and its and each and all of its agents, servants and employees, and each and every and all persons acting by, through or under the authority or direction of said plaintiff, or any of its agents servants or employees, be and they are, and each of them is hereby forever enjoined and restrained from in any manner or form whatsoever, obstructing, interfering with, or hindering the full and complete use, occupancy, possession and enjoyment by the defendant, George E. James, his agents, servants and employees, or his successors or assigns, of the [30] premises hereinbefore described as belonging to him, the said George E. James, or with his or their right of access thereto and therefrom, from and to the said deep and navigable waters of Gastineau Channel.

V.

That the defendant George E. James do have and recover of and from said Pacific Coast Company, a corporation, plaintiff in this action, his costs and disbursements herein to be taxed.

Done in open court this 27th day of January, 1915.

ROBERT W. JENNINGS,

Judge.

[Endorsed]: Original. No. 1024-A. In the United States District Court for the District of Alaska, Division No. One. Pacific Coast Company, a Corporation, Plaintiff, vs. George E. James and Edward Webster, Defendants. Judgment. Filed

in the District Court, District of Alaska, First Division. Jan. 27, 1915. J. W. Bell, Clerk. By C. Z. Denny, Deputy. [31]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1024—A.

PACIFIC COAST COMPANY, a Corporation,
Plaintiff,

vs.

GEORGE E. JAMES and EDWARD WEBSTER,
Defendants.

Petition for Allowance of Appeal.

To the Honorable ROBERT W. JENNINGS,
Judge of the District Court, District of Alaska,
Division Number One, at Juneau.

The above-named plaintiff, Pacific Coast Company, a corporation, conceiving itself aggrieved by the judgment made and entered in the above-entitled court and cause on January 27th, 1915, wherein and whereby it was and is adjudged and decreed as follows, to wit:

I.

“That plaintiff take nothing by his complaint in this action, and that the temporary restraining order heretofore issued out of this court on plaintiff’s application be, and the same is hereby discharged.

II.

That George E. James, defendant in this ac-

tion, is the owner and entitled to the possession of that certain tract of tide land, situate in the town of Juneau, Alaska, and more particularly described as follows: [32]

A certain tract of tide land in the town of Juneau, Alaska, being 113 feet in length along the line of mean high tide in front of lots 1 and 2, Block T, and part of lot 1 in Block S, as follows: that is to say, the full width of Lots 1 and 2, Block T, being 100 feet more or less, and the 13 feet of lot 1 in Block S, which is contiguous to said 100 feet, and extending from said line of mean high tide the full width of said 113 feet out to the navigable waters of Gastineau Channel, an arm of the North Pacific Ocean.

III.

That the plaintiff, Pacific Coast Company, a corporation, be, and it is hereby restrained and enjoined from asserting any right, title or interest in or to said premises, or any part thereof.

IV.

That said Pacific Coast Company, a corporation, plaintiff herein, and its and each and all of its *agent*, servants and employees, and each and every and all persons acting by, through or under the authority or direction of said plaintiff, or any of its agents, servants or employees, be and they are, and each of them is hereby forever enjoined and restrained from in any manner *of* form whatsoever, obstructing, interfering with or hindering the full and complete use, occupancy, possession and enjoyment

by the defendant, George E. James, his agents, servants and employees, or his successors or assigns, of the premises hereinbefore described as belonging to him, the said George E. James, or with his or their right of access thereto and therefrom, from and to the said deep and navigable waters of Gastineau Channel.

V.

That the defendant George E. James do have and recover of and from said Pacific Coast Company, a corporation, plaintiff in this action, his costs and disbursements herein to be taxed.” does hereby appeal to the United States Court of Appeals for the Ninth Circuit, from said judgment and decree, for the reasons set forth in the assignment of errors, and prays that [33] this, its petition for the said appeal, may be allowed and that a transcript of the record, proceedings, and papers upon which said judgment was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California.

Dated February 6th, A. D. 1915.

SHACKLEFORD & BAYLESS,

Attorneys for Plaintiff.

[Order Granting Petition for Appeal.]

The foregoing petition on appeal is granted, and the claim of appeal therein made is allowed.

Done in chambers, this 8th day of Febr. 1915.

ROBERT W. JENNINGS,

Judge.

[Endorsed]: Original. No. 1024—A. In the District Court for the District of Alaska, Division No. 1, at Juneau. Pacific Coast Company, Plaintiff, vs. George E. James and Edward Webster, Defendants. Petition for Allowance of Appeal. Shackleford & Bayless, Attorneys for Plaintiff. Office, Juneau, Alaska. Service of a copy of the within is admitted this 6th day of February, 1915. R. E. Robertson of Attorney for Defendant James. Filed in the District Court, District of Alaska, First Division. Feb. 8, 1915. J. W. Bell, Clerk. [34]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

Number 1024—A.

PACIFIC COAST COMPANY, a Corporation,
Plaintiff,

vs.

EDWARD WEBSTER and GEORGE E. JAMES,
Defendants.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS:
That we, Henry Shattuck and A. A. Humfrey, are held and firmly bound unto George E. James and Edward Webster, defendants in the above-entitled action, in the full and just sum of Two Hundred Fifty (\$250.00) Dollars, to be paid to the said defendants, their executors, administrators, attorneys, or assigns to which payment well and truly to be made, we bind ourselves, our heirs, executors and

assigns, jointly and severly, firmly by these presents.

Sealed with our seals and dated this 6th day of February, 1915.

WHEREAS, lately at a session of the District Court for the District of Alaska, Division Number One, at Juneau, in a suit pending in said court between the said Pacific Coast Company, plaintiff, and George E. James and Edward Webster, defendants, a decree was rendered against the said Pacific Coast Company, and the said Pacific Coast Company having obtained from said Court an order allowing an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment of the aforesaid suit rendered on the 27th day of January, 1915, and a Citation directed to the above-named defendants and appellees, is about to be issued citing [35] and admonishing them to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit to be holden at San Francisco, California.

Now the condition of the above obligation is such that if the above-named Pacific Coast Company shall prosecute its said appeal to effect, and shall answer all costs that may be awarded against it, if it fail to make good its plea, then this obligation is to be void, otherwise to remain in full force and effect.

THE PACIFIC COAST COMPANY,

By S. H. EWING,

Its Agent and Attorney in Fact.

HENRY SHATTUCK.

A. A. HUMFREY.

United States of America,
District of Alaska,—ss.

Henry Shattuck and A. A. Humfrey, being first duly sworn, each for himself and not one for the other, on oath deposes and says: I am a resident and householder of the District of Alaska, and am worth the sum of Five Hundred (\$500.00) Dollars over and above all the legal liabilities and exclusive of property exempt from execution.

HENRY SHATTUCK.

A. A. HUMFREY.

Subscribed and sworn to before me this 6th day of Feby., 1915.

[Seal]

W. S. BAYLESS,

Notary Public for Alaska,

My commission expires Dec. 22, 1917.

O. K.—R. E. ROBERTSON,

Of Counsel for Deft. James.

Sufficiency of the Sureties on the foregoing bond approved this 6th day of February, 1915.

ROBERT W. JENNINGS,

Judge.

[Endorsed]: Original No. 1024—A. In the District Court for the District of [36] Alaska, Division No. 1, at Juneau. Pacific Coast Company, Plaintiff, vs. George E. James and Edward Webster, Defendant. Bond. Shackleford & Bayless, Attorneys for Plaintiff. Office, Juneau, Alaska. Filed in the District Court, District of Alaska, First Division. Feb. 8, 1915. J. W. Bell, Clerk. [37]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1024—A.

PACIFIC COAST COMPANY, a Corporation,
Plaintiff,

vs.

GEORGE E. JAMES and EDWARD WEBSTER,
Defendants.

Bill of Exceptions.

BE IT REMEMBERED that the above-entitled cause came on regularly for trial on the 17th day of July, 1914, before the Hon. Robert W. Jennings, Judge of the District Court for the District of Alaska, Division Number One, at Juneau; the plaintiff being represented by its attorneys, Messrs. Shackleford & Bayless, and the defendants being represented by their attorneys, Messrs. Gunnison & Robertson, whereupon the following proceedings were had: [38]

*In the District Court, for the District of Alaska,
Division No. One.*

No. 1024—A.

PACIFIC COAST COMPANY, a Corporation,
Plaintiff,

vs.

GEORGE E. JAMES,

Defendant.

Transcript of Stenographer's Record.

SHACKLEFORD & BAYLESS, Attorneys for
Plaintiff.

GUNNISON & ROBERTSON, Attorneys for
Defendant.

HON. ROBERT W. JENNINGS, Judge of U.
S. District Court, District of Alaska, Divi-
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[Statement by Mr. Bayless, etc.]

(This cause came on for trial at 10 A. M., July 17, 1914, Mr. W. S. Bayless, of Shackleford & Bayless, appearing for the plaintiff, and Mr. R. E. Robertson, of Gunnison & Robertson, appearing for the defendants. Mr. Robertson requested a continuance until 2 P. M. the same day, on account of the fact that Mr. R. A. Gunnison, senior member of the firm, who had charge of the case, was on the Str. "City of Seattle" and would be in court at that time.)

Mr. BAYLESS.—I think we might proceed—I might be allowed to put in my record testimony, make my statement, and read my depositions, and then when Judge Gunnison comes, I could put on my witnesses for oral testimony.

The COURT.—I don't see any objection to that.

Mr. ROBERTSON.—Of course, if your Honor please, it isn't so much my objection personally—it is because Judge Gunnison expects to try the case and I would rather have him try the whole thing.

The COURT.—Allowed to put in all record testimony— There is no cross-examination on record testimony. You may proceed, Mr. Bayless.

Mr. BAYLESS.—If your Honor will permit me, I would like to make a statement.

Mr. ROBERTSON.—I would like to interpose an exception

The COURT.—Exception is allowed.

Proceedings Had July 17, 1914.

Mr. BAYLESS.—This is a particularly serious case and was instituted about a year or so ago and has

been pending ever since. It stands now on restraining orders on both sides. The hearing on the order to show cause—we got a restraining order against the defendants, restraining them. [41*—1†] from building in front of property that we claim, and, likewise, they got a temporary injunction to keep the matter *in statu quo*. We expect to prove that on the 6th of March, 1881, M. W. Murray, who was a citizen of the United States, located, claimed, and entered into possession of the piece of property in the town of Juneau 600 feet in width and length—600-foot square block, beginning with the low-water mark of Gastineau Channel and extending up the hill; that thereafter, and sometime in the summer of 1881, the wharf was constructed known as the Carroll-Murray Wharf—the wharf was commenced—and that the same was completed in the spring or summer of 1882; and that from that time until sometime in the year 1894 this wharf was used by all of the ocean-going vessels which plied to the Port of Juneau, and was the only wharf in town at that time; and that when the wharf was built, the face of it was only 60 feet wide by about 40 feet long—40 feet wide and 60 feet long—and, on account of the narrowness of the face of the wharf, it was necessary for the vessels to be moored to the shore by head and stern lines; that large piles were driven at the extreme limits of the property, to wit, 600 feet wide, on the tide lands between high and low tide, and that all of the vessels which docked at the Carroll-Murray Wharf—almost all of them—tied up with head and

*Page-number appearing at foot of page of original certified Record.

†Original page-number appearing at foot of page of Testimony as same appears in Certified Transcript of Record.

stern lines to these piles, the piling serving the dual purpose of defining the limits of the Carroll-Murray location notice and also to moor these vessels, and that it was necessary to moor these vessels in such a manner, and that the whole tract of the tide lands from the year 1881 to 1894 were actually used by the wharf structures and by the occupation of these vessels which came there, by means of these piles, and that [42—2] we have several affirmative defenses. We first take the position under the Act of 1884 as to our possessory rights in all of this property known as the Carroll-Murray Wharf Site, including the ground now claimed by Mr. James. We further take the position that since we had the actual possession from 1881 or 1882 down to 1894 under a duly recorded location notice, that such occupation and possession is within the meaning of our statutes, which provide that an open, notorious, adverse possession, under color and claim of title for more than seven years will conclusively give title, save and except as against the United States. We further take the position that Mr. James never used the beach except in a casual and transitory way until 1896—I mean 1906—or thereabouts, when the Perseverance Company, or Charles E. Davidson, as receiver of the Wrangell Sawmill, finished hauling the mill timbers for the Perseverance Mill, which mill timbers were landed on the gridiron and finished with that gridiron. Mr. James then came in and used this gridiron under a permit from the Pacific Coast Co., this plaintiff, and Mr. James has been in possession only since 1906, or thereabouts, down to the date of the institution of this case; that his possession has been

permissive and never has been open, notorious, and adverse, and we also propose to prove that since 1894, the time the Carroll-Murray Wharf was abandoned as a wharf—and I want to be distinctly understood as objecting to the use of the word abandon in any other sense than that they discontinued the use of that wharf—and from 1894 the plaintiff, the Pacific Coast Company had supervision of these tide lands, have kept squatters off, paid taxes, leased it from time to time, have acted as owner and claimed it, and have in no sense [43—3] abandoned the property. We further take the position that Mr. James can never get an adverse possession against us down there without color of title, for the reason that this is unpatented property—Government property—and that no adverse possession will run prior to the date—

The COURT.—As against a private party?

Mr. BAYLESS.—As against us. We claim that we have as good a title as it is possible to get and that our title is as good as against any one save and except against the United States. In other words our possession is perfected so far as any one except the Government is concerned, and we take the position that since it is not patented, the statute of limitations will not run prior to patent, and that Mr. James' possession cannot be adverse to us in any sense of the word, even though he has been there since 1900, as he claims in his answer to have been. I merely make this elaborate statement for the purpose of calling these three points to your Honor's attention now.

If Mr. Robertson has no objection, and the Court will permit me, I would like to introduce the record testimony from the record in the McCloskey case, and if I might be permitted by stipulation to introduce the record to show our chain of title here, I think it would save time, because the chain of title is undoubtedly correct and it would save my having the Commissioner come up and bring all the books.

Mr. ROBERTSON.—Well, of course we deny their title, your Honor. I don't like to stipulate or admit all that chain of title as given in a transcript in another case. I don't think it is the proper proof—not the best evidence, certainly. [44—4]

Mr. BAYLESS.—I appreciate, if the Court please, I have no right, but it was merely to save time. If your Honor will not permit me to do it in that way, I will be compelled to have the Commissioner up.

The COURT.—I cannot permit you to do it over the objection of the defendants' counsel.

Mr. ROBERTSON.—We object to it. Of course, as far as that book is concerned, it seems to me that he might put the Commissioner on to compare it, but I don't like to stipulate—I object to it as not the best evidence.

[Motion to Amend Complaint, etc.]

Mr. BAYLESS.—Before proceeding, there is a matter I will call to the attention of the Court before we start. I would like to amend the complaint in just a couple of minor particulars. In paragraph two of the complaint I would like to change "1888" to "1881."

The COURT.—What page is it on?

Mr. BAYLESS.—Page one of the complaint. It was a typographical error.

The COURT.—It has already been changed here. That is, on the first line of the second paragraph?

Mr. BAYLESS.—Yes.

The COURT.—It reads 1881 here.

Mr. BAYLESS—That is correct, sir. Then on page two of the complaint on line eight after the word “continuous” I would like to add the word “adverse” and after the word “possession” I would like to interpolate “under color and claim of title for more than seven years.”

The COURT.—Any objection to that?

Mr. ROBERTSON.—I don't think so. I would like to have [45—5] an opportunity to amend our answer in regard to that. You see, all my papers—Judge Gunnison took everything and I have nothing in regard to the case at all.

The COURT.—I don't think it would affect your pleading one way or the other.

Mr. ROBERTSON.—Well, of course we deny it. What line is that on?

Mr. BAYLESS.—Right here (indicating).

The COURT.—Are those the only changes?

Mr. BAYLESS.—Those are the only ones, sir.

The COURT.—Now, Mr. Robertson, if this amendment calls for an answer, you may amend the answer already filed, but I apprehend that you deny this allegation.

Mr. ROBERTSON.—Well, of course our papers will be up here this afternoon and we will see them.

As I say, Judge Gunnison took our files with him.

Mr. BAYLESS.—If the Court please, I offer in evidence the location notice by M. W. Murray—a certified copy of which I have here. If Mr. Robertson cares to, I will have the Commissioner up to verify it.

Mr. ROBERTSON.—Well, of course I don't think it is the proper way to offer those things. As I say, inasmuch as I am associate counsel—it would be different if I were the senior counsel—I don't like to admit these unless they are put in in the proper manner.

The COURT.—This appears to be a certified copy of a record by the U. S. Commissioner and Ex-officio Recorder. What is your objection?

Mr. ROBERTSON.—My objection is that it is not the best evidence—where an original location notice or at least an[46—6] original record from the Commissioner's office can be obtained.

The COURT.—I don't think so. You object to it on the ground that it is not the best evidence?

Mr. ROBERTSON.—Yes, sir.

The COURT.—Objection overruled.

Mr. ROBERTSON.—I will add the further objection that it is incompetent, irrelevant, and immaterial.

The COURT.—Your objection will be overruled.

(Admitted in evidence and marked "Plaintiff's Ex. #1.")

Mr. BAYLESS.—I next offer in evidence the minutes of the miners' meeting, Rockwell, Alaska, March 21, 1881,—certified copy of these minutes.

Mr. ROBERTSON.—I will make the same objection to that, your Honor. Further, it seems to me that it is immaterial.

Mr. BAYLESS.—Preliminary—it is the minutes in another meeting I had in mind.

The COURT.—I am not so sure about this, Mr. Bayless.

Mr. BAYLESS.—I would ask your Honor to suspend judgment on this so I will have an opportunity to offer the minutes of the second meeting which I have. I now offer in evidence—

The COURT.—Just a moment. You withdraw this offer for the present?

Mr. BAYLESS.—Just for the present, and ask that they be considered together.

The COURT.—Let us see what the other one is.

Mr. BAYLESS.—A meeting held at Rockwell, Alaska, March 26th, referring to minutes of this meeting—a certified copy. I will say that the minutes of the first meeting are not particularly important, but taken with the minutes [47—7] of the second meeting give the exact situation.

The COURT.—How are miners' meetings relative to property on the waterfront?

Mr. BAYLESS.—It is merely indicative of possession and rights of possession of predecessors in the early days—part of his chain of title.

Mr. ROBERTSON.—I object to that exhibit, your Honor, also on the further ground that it is in no wise binding on defendant in this case.

Mr. BAYLESS.—Wouldn't be any more binding than a deed.

The COURT.—This is not a jury case, gentlemen. These may be admitted and if they are not shown to be relevant, I can disregard them easily enough.

(Admitted in evidence and marked “Plaintiff’s Ex. #2 and #3.”)

Mr. ROBERTSON.—We except.

The COURT.—I may strike them out if I find they are not competent and relevant.

Mr. BAYLESS.—But you admit them subject to their being connected up. If the Court please, I would ask for an adjournment until I get the records from the Commissioner’s office. It will take me about half an hour.

Mr. ROBERTSON.—I wish to make the further objection to this. It is not an abstract of the Commissioner and he has probably a number of deeds in here that if they come up separately we may want to object to them.

The COURT.—Yes, but the objection you already made has been sustained.

(Whereupon the Court took a recess until 11:30 A. M. the same day.) [48—8]

Mr. ROBERTSON.—I might say, your Honor, that the “Seattle” is over at the Island now and coming down to Douglas. It may be that Judge Gunnison will admit that record—as I say, I am not the senior counsel in this case—and I think it might expedite matters to continue the matter until half past one or two o’clock.

The COURT.—It might and it might not. If Judge Gunnison comes and says “No,” we have lost

all this time. There is no use in losing time. [49—9]

[Testimony of J. B. Marshall, for Plaintiff.]

J. B. MARSHALL, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination.

(By Mr. BAYLESS.)

Q. Your name is J. B. Marshall?

A. Yes, sir.

Q. You are United States Commissioner for the Juneau Precinct and Ex-officio Recorder?

A. Yes, sir.

Q. Mr. Marshall, I hand you this book and ask you to identify it.

A. This is book No. 1 of lode claims, placer claims, water rights, and town lots, records of the Juneau Recording District.

Q. It is the official record? A. Yes, sir.

Q. I call your attention to page 71 of this book and ask you what that record is.

A. There appears on page 71 an instrument dated Rockwell, Alaska Territory, March 21, 1881, a meeting pursuant to call.

Q. I hand you this instrument and ask you if this instrument is a certified copy of that?

A. It is a certified copy of the record on page 71 of book A, or 1, of lodes.

Mr. ROBERTSON.—Which exhibit is that?

Mr. BAYLESS.—The one introduced over your objection.

Q. I call your attention, Mr. Marshall, to page 73 of the same record. I will ask you what that is.

(Testimony of J. B. Marshall.)

A. This is an adjourned meeting. [50—10]

Q. Miners' meeting?

A. Yes, miners' meeting of the town of Rockwell.

Q. What is the date?

A. Under date of March 28, 1881.

Q. Did I say page 73 or 72? A. 73.

Q. I will change that and ask you what page 72 has on it?

A. That is also a meeting of the miners of the town of Rockwell, dated March 26th.

Q. Is this a certified copy of that record? (Handing paper to witness.) A. It is.

Mr. BAYLESS.—That last exhibit has been offered in evidence.

The COURT.—I never admitted that—yes, I did, subject to motion to strike. They are exhibits "A" and "B."

The CLERK.—1 and 2.

Mr. BAYLESS.—2 and 3. The first exhibit is the location notice.

Q. (By Mr. BAYLESS.) On page 144 of that record I think a location notice appears, is that so?

A. Location notice of M. W. Murry.

Q. For a wharf site? A. Yes.

Q. Is this a certified copy of Plaintiff's Exhibit No. 1? (Handing paper to witness.)

A. It is, yes, sir.

Q. Mr. Marshall, I ask you to identify this book which I hand you.

A. This is a minute-book of the Harris Mining District from August, 1881, to February, 1888. [51—11]

(Testimony of J. B. Marshall.)

Q. I call your attention to page 15 of that book and ask you what that record shows.

A. That is a meeting adjourned from September 12, 1881, called to order on December 14, 1881, of the miners of the town of Rockwell.

Mr. BAYLESS.—We offer this in evidence, if the Court please. It is for the purpose of showing that the name of the town was first Rockwell, then Harrisburg, and then Juneau. The name was changed at this meeting.

Mr. ROBERTSON.—Is that all that is in that?

Mr. BAYLESS.—You may examine it; I think that is all. No, there is considerable more to it. There are miners' rules, too, and a reference to the Hannah survey and plat, also with reference to the size of the lots.

Mr. ROBERTSON.—Just on page 15, or all these pages that follow it?

Mr. BAYLESS.—The minutes of the entire meeting.

Mr. ROBERTSON.—I object to it as immaterial and irrelevant.

The COURT.—That is a minute-book—what is it known as.

Mr. ROBERTSON.—Minute-book of the Harris Mining District, August, 1881, to February, 1888.

The COURT.—What pages?

Mr. BAYLESS.—15, 16, 17, 18, 19, 20, 21, and 22.

The COURT.—You object on the ground that it is immaterial and irrelevant?

Mr. ROBERTSON.—Yes, your Honor. Of course,

(Testimony of J. B. Marshall.)

I would like to have a chance to go through it more thoroughly. I am taking Mr. Bayless' statement for it. [52—12]

The COURT.—The book will be received subject to motion to strike later on.

Mr. ROBERTSON.—Exception.

The COURT.—It is the minute-book of the Harris Mining District, pages 15 to 22, inclusive, and is known as Plaintiff's Exhibit #4.

Mr. BAYLESS.—May I have the privilege of substituting a certified copy?

The COURT.—Yes, sir.

Q. (By Mr. BAYLESS.) I hand you book 9 of the records of the Juneau Recording Precinct, Mr. Marshall, and call your attention to page 688 and ask you to identify that record.

A. (By the WITNESS.) That is book 9 of Deeds, pages 688 and 689, and show the record of a deed from M. W. Murry to Charles S. Johnson.

Q. What is the date of that deed?

A. The date of the deed is November 22, 1893, filed for record at 11 A. M., November 21, 1893.

Q. What property does it purport to convey?

Mr. ROBERTSON.—It seems to me that the record is the best evidence itself.

The COURT.—Yes.

Mr. BAYLESS.—Very well, we offer the deed in evidence.

Mr. ROBERTSON.—Object to it as immaterial and irrelevant until it is connected up—proven that it is the same property.

(Testimony of J. B. Marshall.)

The COURT.—The exhibits referred to will be received subject to motion to strike.

(Admitted in evidence and marked “Plaintiff’s Ex. #5.”)

Q. (By Mr. BAYLESS.) I call your attention to Book 11, page 665, and ask you if that is an official record of your office. A. It is. [53—13]

Q. What is that instrument there?

A. That is a deed from M. W. Murry to James Carroll.

Mr. BAYLESS.—We offer that deed in evidence.

Mr. ROBERTSON.—Same objection to that, your Honor.

The COURT.—Same ruling—subject to motion to strike.

(Admitted in evidence and marked “Plaintiff’s Ex. #6.”)

Q. (By Mr. BAYLESS.) I hand you Book 3 of Deeds; is that an official record of your office?

A. That is.

Q. I call your attention to page 10 and ask you what that is?

A. That is a deed between—or from Edward C. Hughes and M. F. Griffin, pages 10 and 11.

Mr. BAYLESS.—We offer that deed in evidence.

Mr. ROBERTSON.—Same objection.

The COURT.—Same ruling.

(Admitted in evidence and marked “Plaintiff’s Ex. #7.”)

Q. (By Mr. BAYLESS.) I hand you book 10; is that an official record of your office?

(Testimony of J. B. Marshall.)

A. Yes, book 10 of deeds, an official record of the office.

Q. I call your attention to pages 163-4-5, and ask you what that instrument is?

A. That is a deed from M. W. Murry to Frank W. Griffin.

Mr. BAYLESS. I offer that deed in evidence and ask to substitute a certified copy in the same way as the rest.

Mr. ROBERTSON.—Same objection.

The COURT.—Same ruling.

(Admitted in evidence and marked "Plaintiff's Ex. #8.")

Mr. ROBERTSON.—I suppose we are allowed an exception to all these rulings?

The COURT.—Yes, sir. [54-14]

Q. (By Mr. BAYLESS.) I hand you book 12; is that book 12 of Deeds, one of the records of your office? A. Yes, book 12 of Deeds.

Q. I call your attention to page 63.

A. That is a deed from C. S. Johnson and Mary D. Johnson to James Carroll.

Mr. BAYLESS.—I offer that deed in evidence.

Mr. ROBERTSON.—Same objection.

The COURT.—Same ruling.

Mr. ROBERTSON.—Exception.

(Admitted in evidence and marked "Plaintiff's Ex. #9.")

Q. (By Mr. BAYLESS.) I call your attention to page 198 of the same record and ask you what that instrument is.

(Testimony of J. B. Marshall.)

A. Mr. James Carroll and D. H. Carroll and Ed. C. Hughes to J. I. Waterbury.

Mr. ROBERTSON.—What is that page, please, 198 and 199?

A. (By the WITNESS.) Yes. Jefferson Coolidge is also a grantee. That is a deed. That runs from pages 198 to 200.

Mr. BAYLESS.—We offer that deed in evidence, together with the attached plat.

Mr. ROBERTSON.—I offer the further objection to that that it is not proven what the plat is.

The COURT.—Same ruling.

(Admitted and marked “Plaintiff’s Ex. #10.”)

Q. (By Mr. BAYLESS.) I call your attention to page 201 of the same record, and ask you what that instrument is.

A. That is a deed from Frank W. Griffin and Sarah E. Murry to J. I. Waterbury and T. Jefferson Coolidge, Jr. That is partly on page 202.

Mr. BAYLESS.—I offer that deed in evidence.

Mr. ROBERTSON.—Same objection.

The COURT.—Same ruling. [55—15]

Mr. ROBERTSON.—Exception.

(Admitted in evidence and marked “Plaintiff’s Ex. #11.”)

(Q. By Mr. Bayless.) I call your attention to page 272 and ask you what that is.

A. That is a deed from Mary K. Griffin—

Q. M. T. Griffin, isn’t it?

A. It is Mary K. Griffin, as one of the heirs at law of M. T. Griffin, deceased, to J. I. Waterbury and T.

(Testimony of J. B. Marshall.)

Jefferson Coolidge, Junior.

Mr. BAYLESS.—I offer that deed in evidence.

Mr. ROBERTSON.—Same objection.

The COURT.—Same ruling.

Mr. ROBERTSON.—Exception.

(Admitted in evidence and marked “Plaintiff’s Ex. #12.”)

Q. (By Mr. BAYLESS.) I hand you this volume and ask you to identify it.

A. That is known as the book of Trustees’ Deeds.

Q. An official record of your office?

A. Yes, sir.

Q. I call your attention to page 114, and ask you what that instrument is.

A. That is a conveyance by Thomas R. Lyons, Townsite Trustee, to John I. Waterbury and T. Jefferson Coolidge.

Mr. BAYLESS.—We offer that deed in evidence.

Mr. ROBERTSON.—I make the same objection.

The COURT.—Same ruling.

(Admitted in evidence and marked “Plaintiff’s Ex. #13.”)

Q. (By Mr. BAYLESS.) I call your attention to page 253 of the same volume and ask you what that instrument purports to be.

A. Deed from Thomas R. Lyons to John I. Waterbury and T. J. Coolidge, Jr.

Mr. BAYLESS.—We offer that deed in evidence.

[56—16]

Mr. ROBERTSON.—Same objection.

The COURT.—Same ruling.

(Testimony of J. B. Marshall.)

(Admitted in evidence and marked "Plaintiff's Ex. #14.")

Q. (By Mr. BAYLESS.) I call your attention to page 254 of the same volume and ask you to identify that instrument.

A. That is a deed from Thomas R. Lyons to the same parties, John I. Waterbury and T. J. Coolidge.

Mr. BAYLESS.—Offer that in evidence.

Mr. ROBERTSON.—Same objection.

The COURT.—Same ruling.

(Admitted in evidence and marked "Plaintiff's Ex. #15.")

Q. (By Mr. BAYLESS.) I call your attention to page 262 of the same volume.

A. That is a deed from Thomas R. Lyons to the same parties.

Mr. BAYLESS.—We offer that deed in evidence.

Mr. ROBERTSON.—Same objection.

The COURT.—Same ruling.

(Admitted in evidence and marked "Plaintiff's Ex. #16.")

Q. (By Mr. BAYLESS.) What is this volume, Mr. Marshall?

A. This is 13 Deeds, records of the Recorder's office.

Q. I call your attention to page 499.

A. That apparently is a deed from John I. Waterbury and T. Jefferson Coolidge to the Pacific Coast Company, contained on pages 499 to 505 inclusive, and includes a plat.

Mr. BAYLESS.—We offer the deed, together

(Testimony of J. B. Marshall.)

with the attached plat, in evidence.

Mr. ROBERTSON.—We make the same objection; also on the ground that the plat hasn't been properly identified, and we further move to strike the witness' response as to what it apparently is. The instrument itself shows.

A. (By the WITNESS.) Well, it is a deed.
[57—17]

The COURT.—Admitted on the same conditions as stated in preceding testimony.

Mr. ROBERTSON.—Exception.

(Admitted in evidence and marked "Plaintiff's Ex. #17.")

Q. (By Mr. BAYLESS.) I call your attention to page 505 of the same record and ask you to identify the instrument there recorded.

A. That is a deed from John I. Waterbury and T. Jefferson Coolidge to the Pacific Coast Company, pages 505 to 507 inclusive.

Mr. BAYLESS.—We offer that deed in evidence.

Mr. ROBERTSON.—Same objection.

The COURT.—Same ruling.

(Admitted in evidence and marked "Plaintiff's Ex. #18.")

Mr. BAYLESS.—I would ask the privilege of having certified copies made by the Commissioner and substitute them for these records.

The COURT.—These are admitted subject to motion to strike.

Mr. BAYLESS.—Yes.

The COURT.—All right.

(Witness excused.)

(Testimony of J. B. Marshall.)

(Whereupon Court adjourned until two o'clock P. M. the same day, when Court reconvened pursuant to adjournment.) [58—18]

Mr. BAYLESS.—In looking over these papers I do not find the reply. There is an affirmative defense set up and I would like to have the privilege of making a denial of that affirmative defense.

The COURT.—A general denial?

Mr. BAYLESS.—Yes, a general denial; and I will frame up a reply and present it tomorrow morning, if I may have that privilege. It was due to an oversight—I had forgotten it. I don't think Judge Gunnison has taken any default on that.

Mr. GUNNISON.—No, I have not.

Mr. BAYLESS.—Were you aware of that?

Mr. GUNNISON.—I was. I was aware that the case wasn't at issue. I assume, your Honor, that the pleadings in the condition in which they were—that the allegations of the affirmative answer stand as denied. I don't know as we have any objection to their filing a general denial, but if there is any affirmative matter in it, we want to be in a position where we are not precluded from moving against it.

Mr. BAYLESS.—I will present the reply in the morning. I think it will be a general and specific denial.

Mr. GUNNISON.—It occurs to me that until the case is fully at issue that we don't know where we are at. Of course, that wouldn't have any effect on the direct proof in the case, but still the case isn't at issue.

(Testimony of J. B. Marshall.)

Mr. BAYLESS.—If your Honor will just consider that there is a general and specific denial to all the allegations of new matter set up in the answer—

The COURT.—Very well. You file a formal reply by tomorrow morning. [59—19]

[Testimony of Edward Webster, for Plaintiff.]

EDWARD WEBSTER, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination.

(By Mr. BAYLESS.)

Q. Please state your name and residence.

A. Edward Webster; Juneau.

Q. What is your business, Mr. Webster?

A. Well, different things, telephone, pile driving.

Q. How old are you? A. I am 55.

Q. When did you first come here? A. In 1881.

Q. March 12, 1881? A. Yes, March 12, 1881.

Q. What was your business at that time?

A. Well, when I first came here I was mining.

Q. Where were you living then, in Juneau?

A. I was.

Q. Whereabouts in Juneau were you living?

A. I was living at the old wharf—well not till 1884.

Q. Are you acquainted with the old Carroll-Murray wharf site? A. Yes, sir.

Q. And particularly with blocks R, S, and T, according to the official plat of Juneau? A. Yes.

Q. Were you acquainted in 1881 with blocks R, S, and T,? A. No, sir.

(Testimony of Edward Webster.)

Q. When did you first become acquainted with those blocks? A. About 1885. [60—20]

Q. 1885—Not before that time? A. No.

Q. Do you know the situation on the beach at the site of the old Carroll wharf prior to 1885? A. Yes.

Q. I believe I understood you to say you weren't acquainted with those blocks prior to 1885?

A. No; 1885 was when we had charge of it.

Q. You and your father had charge of it in 1885?

A. Yes.

Q. What was the situation on the beach in 1885 with reference to structures?

Mr. GUNNISON.—We object to that question as too indefinite as to the location on the beach. I think this examination should be—the case should be confined to the land in controversy, or, at the most, to the condition of the so-called Carroll & Murray wharf site—not generally on the beach.

The COURT.—I think that is correct, Mr. Bayless. The question is a little too general.

Q. (By Mr. BAYLESS.) What improvements were on the Carroll-Murray wharf site when you first became acquainted with it in 1885?

Mr. GUNNISON.—We object to that as irrelevant, incompetent, and immaterial and too indefinite with reference to what the Carroll and Murray wharf site was. The witness testifies he was familiar with it, but I think, for the purpose of the record, it should be shown generally where the Carroll-Murray wharf site was located. Of course, I realize that the Court and counsel understand where it is,

(Testimony of Edward Webster.)

but I think the record should be made a little more specific on [61—21] that subject before entering into a discussion of this case.

The COURT.—He testified that he was superintendent of the company.

Mr. GUNNISON.—I understand, but the Carroll-Murray wharf site might be anywhere. As I recall, there isn't any testimony that it is even in Juneau.

The COURT.—Objection overruled. Read the question. (Q. read by stenographer:) What improvements were on the Carroll-Murray wharf site when you first became acquainted with it in 1885?

A. (By the WITNESS.) Just the wharf and warehouse.

Q. (By Mr. BAYLESS.) Will you describe the wharf, please.

A. Well, the wharf was an approach from the warehouse building upon cribbing or logs. Then from the cribbing out there was an approach—it was 16 feet wide running out about a hundred feet, of piling, and the face of the dock was 40 by 80 feet.

Mr. GUNNISON.—How far did you say it ran out?

A. About 80 feet from the cribbing—about 100 and 40 feet.

Q. (By Mr. BAYLESS.) Built on tide lands in front of blocks O, P, Q, R, S, and T, in the town of Juneau?

Mr. GUNNISON.—Object to that as leading.

The COURT.—Do you mean the entire wharf?

Mr. BAYLESS.—Built out in front of those

(Testimony of Edward Webster.)

blocks, in front of those six blocks.

Mr. GUNNISON.—Object to that as leading and we object to any evidence further with reference to any ground except that in controversy; and the pleadings in the case show that the ground in controversy is the piece directly in front of blocks S and T, 100 feet in front of block T, and 13 feet in block S—front of block S. [62—22]

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception. Your Honor understands it is objected to as leading?

Q. (By Mr. BAYLESS.) I asked you if the old Carroll wharf was built on the tide lands in front of blocks O, P, Q, R, S, and T, in Juneau?

A. It is not.

Q. I hand you a map and ask if you can identify the Carroll-Murray wharf on it?

A. This is not a proper map of the situation of the wharf, if that is the wharf out there. The wharf—you see, there was a coal-house here and the wharf comes out here. (Indicating.)

Q. That is the wharf. (Indicating.)

A. Oh, that is it in there, yes.

Q. This map correctly represents the situation on the ground when you first became acquainted with the wharf? A. Yes.

Mr. BAYLESS.—We offer this map in evidence and ask to have it marked.

Mr. GUNNISON.—I would like to ask the witness a question or so with reference to this, your Honor. Q. You say this map correctly represents

(Testimony of Edward Webster.)

the situation when you became acquainted with the property?

A. Yes.

Q. In what respect does it correctly represent it, that is, as to all the lots and buildings and projections of the wharf? A. Just the wharf alone.

Q. What do you mean by the wharf alone?

A. When we went there the property was supposed to be 600 feet wide. [63—23]

Q. Tide flats?

A. Tide flats, and there was a stake right in the center of this warehouse and there was 300 feet on each side of the wharf here. (Indicating.)

Q. Then you mean there are things on that map that were not on there when you came here?

A. Yes, sir,—just the wharf here.

Q. Well, you say the only thing correctly indicated on there was where the dotted lines which bear the inscription “Old Carroll and Murray Wharf, now gone” are?

A. Yes. I built this house. (Indicating.)

Mr. BAYLESS.—Q. Which house?

A. This coal-house and that house there. (Indicating.)

Mr. GUNNISON.—We object to the introduction of the map on the ground that it doesn't show the condition as it was at the time to which this witness testifies. He says there is now more on there than there was at the time.

The COURT.—His testimony has gone to show what was on there and what has been put on there

(Testimony of Edward Webster.)

since; consequently, the map is admissible as far as it goes—taken in connection with the testimony of the witness explaining it. The objection will be overruled.

Mr. GUNNISON.—Exception.

(Admitted in evidence and marked: “Plaintiff’s Ex. #19.”)

Q. (By Mr. BAYLESS.) Mr. Webster, when you first became acquainted with the property, were there any piles to define the boundaries?

Mr. GUNNISON.—Object to that as leading?

The COURT.—Yes, I don’t think it is right to lead a witness, Mr. Bayless, on a material matter. [64—24]

Mr. BAYLESS.—I beg your Honor’s pardon. I didn’t think I was leading him.

Q. I will ask you, Mr. Webster, when you first became acquainted with this property, whether the boundaries of the same were marked and defined on the ground? A. No, sir.

Q. Were those boundaries ever defined on the ground as far as you know? A. Yes.

Q. When? A. In 1887, the fall of ’87.

Q. What did those boundaries consist of and where were they placed?

A. Consisted of two piles on the 600 feet limit.

Q. I don’t believe I exactly understand you.

A. Well, you see, we measured off—of course, the property was supposed to be 600 feet wide and there was only one stake on it that we—

Q. Where was that stake?

(Testimony of Edward Webster.)

A. Right in the center of the property where the warehouse stood, on the back there. I did some repairing on the wharf that fall and drove some piles on each end along the shore.

Q. There were not any piles on the seaward boundaries of the claim when you first went there?

A. No, sir.

Q. Well, did you say you drove these piles?

A. Yes, in 1887,—a couple of piles on each end.

Q. Two piles on each end? A. Yes.

Q. How big were those piles?

A. Oh, just small piles driven in the shore.

Q. About how big? [65—25]

A. Twelve or fourteen inches.

Q. And how high from the ground?

A. About five feet.

Q. Were those piles driven on the uplands above high tide? A. No, sir.

Q. Where, with reference to the tide lands?

A. Down on the beach where we could get at them with a pile-driver. Couldn't get up very high—there wasn't enough water to float the pile-driver.

Q. Do you know how the vessels moored at the Carroll wharf in the early days?

A. Yes; they tied to the wharf.

Q. Did they tie head and stern lines ashore?

Mr. GUNNISON.—Object to that as leading and suggestive.

The COURT.—Yes, I think so. He says he knows how—ask him how.

(Testimony of Edward Webster.)

Mr. GUNNISON.—He says they tied to the wharf.

The COURT.—I understand. Ask him how.

Q. (By Mr. BAYLESS.) How did they tie them to the wharf? A. Why, tied to the wharf.

Q. Were they moored in any other way?

A. Not that I ever knew of.

Q. Never ran the head and stern lines ashore?

Mr. GUNNISON.—Object to that as leading and suggestive.

The COURT.—Yes, I think so.

Q. (By Mr. BAYLESS.) You are quite positive, Mr. Webster, that the vessels which came to Juneau in the early days ran their lines to the wharf?

A. All that I tied up and I tied a good many of them—never tied them anywheres else. [66—26]

Q. Were these piles on the corners of the property which you say—were they used for any other purpose than marking the boundaries of the property?

A. Not to my knowledge.

Q. Do you know the extent of the claim of Captain Carroll to that wharf site?

Mr. GUNNISON.—We object to that as incompetent, irrelevant and immaterial and not the best evidence.

The COURT.—The objection will be overruled, but you must limit it to some time, Mr. Bayless—claim of Captain Carrol when?

(By Mr. BAYLESS.) When you first became acquainted with the property.

A. No, I did not know the limits of it then.

(Testimony of Edward Webster.)

Q. Did you ever see the location notice?

A. No, never did.

Q. Never at any time? A. No.

Q. You don't know how much of a wharf site Captain Carroll claimed when you first worked on the wharf in 1885? A. No, not until 1887.

Q. And what was the claim in 1887?

A. It was 600 feet to deep water.

Q. You do not know whether or not he had ever claimed that much ground prior to 1887?

A. No.

Q. Were you in Juneau some time in March—March 12th I think it was—1881, when the miners had a meeting? A. I arrived here that day.

Q. Do you know whether or not the miners and citizens of Juneau [67—27] ever recognized Captain Murray's wharf site?

Mr. GUNNISON.—We object to that question on the ground that it is irrelevant, incompetent and immaterial, and as not the best evidence of what the miners did.

The COURT.—I don't see the materiality of it myself at this time, but I will admit it subject to a motion to strike.

Mr. GUNNISON.—We suggest that the witness be cautioned to answer it yes or no.

The COURT.—Yes, you may answer whether you know. Read the question.

(Q. read by stenographer:.) Do you know whether or not the miners and citizens of Juneau ever recognized Captain Murray's wharf site? A. Yes.

(Testimony of Edward Webster.)

Q. (By Mr. BAYLESS.) Do you know what that recognition consisted of? A. No, I do not.

Mr. GUNNISON.—Same objection.

The COURT.—Same ruling; admitted on the same condition.

Q. (By Mr. BAYLESS.) Did you ever see the minutes of that miners' meeting?

A. No, I did not.

Q. Do you know what was done at that miners' meeting?

Mr. GUNNISON.—We object to that as irrelevant, incompetent and immaterial, not the best evidence, and that, in any event, the witness is not qualified to testify unless he was personally present and participated in it.

The COURT.—Well, he may answer if he knows.

A. (By the Witness.) Only from hearsay.

Mr. GUNNISON.—We object to anything he has to say, if [68—28] it is only from hearsay and move to strike whatever he has testified to in reference to it.

The COURT.—Objection sustained.

Q. (By Mr. BAYLESS.) You weren't present at that miners' meeting? A. No, sir.

Q. Mr. Webster, did they recognize—

Mr. GUNNISON.—I object.

Mr. BAYLESS.—The witness says he knew the citizens recognized it.

The COURT.—No, he did not. He was asked whether he knows and he testifies he does know.

(Testimony of Edward Webster.)

You asked whether he knows or not and he answered he does. Whether they did or not is another question. He is simply testifying whether he knows whether they did recognize it.

Mr. BAYLESS.—I beg your pardon. I misunderstood the purport of his testimony.

Q. Did the miners and citizens recognize Captain Murray's right to a wharf site?

Mr. GUNNISON.—We object to that as irrelevant, incompetent and immaterial, not the best evidence, and the witness has already testified that all he knows with reference to that is from hearsay.

The COURT.—Objection sustained.

Q. (By Mr. BAYLESS.) From 1885 down, how long did you have charge of the wharf, Mr. Webster?

A. Till 1894.

Q. How long was the Carroll wharf used as a wharf?

A. 1892 it was—built a new wharf here in '92.

Q. When was it used as a wharf?

A. Then we moved away from that wharf that fall.

Q. Moved from the Carroll wharf? [69—29]

A. Yes, up to the new dock up here. (Indicating.)

Q. In 1894? A. Yes, in the fall of 1894.

Mr. GUNNISON.—Q. Did you say 1892?

A. 1892, we built the wharf.

Q. And you say you had charge till 1894?

A. Yes.

Q. (By Mr. BAYLESS.) And the Carroll wharf

(Testimony of Edward Webster.)

was used as a wharf until 1894?

A. Well, the Alki—the last it was used there was the Alki, unloading some stuff for up the basin.

Q. When was that?

A. Well, if my memory serves me right, it was somewhere about 1895, something like that.

Q. During the period from 1885 to 1894 where did all the seagoing vessels coming to Juneau land?

A. Well, they landed at the old Carroll wharf.

Q. During that period how much of the tide lands were claimed by Captain Carroll or his successors in interest?

Mr. GUNNISON.—We object to that on the ground that it is irrelevant, incompetent and immaterial, not the best evidence of the claim, and that, further, it is not the proper way to show—that is, not by claiming, but being the user of the tide lands.

The COURT.—Well, you have a cross-examination of this witness, Judge Gunnison. You can bring out on cross-examination what the source of his knowledge is. Objection overruled.

Mr. GUNNISON.—Exception.

Q. (By Mr. BAYLESS.) I asked you if you knew how much of the [70—30] tide lands in front of the Carroll-Murray wharf site were claimed by Captain Carroll, or his successors in interest, between 1885 and 1894.

The COURT.—Between 1885 and 1894?

Mr. BAYLESS.—Yes, that is, during the period when Mr. Webster had charge of the dock.

The COURT.—Objection sustained.

(Testimony of Edward Webster.)

Q. (By Mr. BAYLESS.) Do you know how much of that ground was actually occupied by Captain Carroll and his successors in interest between 1885 and 1894?

A. About 80 feet of it on the face.

Q. The rest of the wharf site was not occupied in any way? A. No, sir.

Q. Was anyone else occupying it? A. No, sir.

Mr. BAYLESS.—Your Honor will not permit me to ask him the extent of the Captain Carroll claim there during that period.

The COURT.—Between 1885 and 1894?

Mr. BAYLESS.—During the time he had charge of it.

The COURT.—Q. I understood you to say you went there in 1885.

A. (By the WITNESS). Yes.

Q. What part of the year?

A. In the fall of 1885.

The COURT.—An objection will be sustained to that question.

Q. (By Mr. BAYLESS.) Have you been acquainted with the property ever since 1885?

A. Well, I can't say that in everything that was going on it, no.

Q. Do you know whether or not the Pacific Coast Company, since [71—31] it bought the property, has claimed it—claimed these tide lands in dispute?

Mr. GUNNISON.—We object to that as incompetent, irrelevant, and immaterial, and not the best evidence.

(Testimony of Edward Webster.)

The COURT.—Objection sustained.

Q. (By Mr. BAYLESS.) Do you know whether or not anyone has occupied this beach prior to 1906?

Mr. GUNNISON.—We object to that as irrelevant, incompetent and immaterial, and too indefinite as to the ground or beach referred to.

The COURT.—Oh, well, when you say this beach, you mean this 600 feet in dispute.

Mr. BAYLESS.—Yes, sir.

Mr. GUNNISON.—We submit there aren't 600 feet in dispute; there are only 113 feet.

Mr. BAYLESS.—I will limit that to the 113 feet in dispute.

The COURT.—Now, your question is: "Who occupied that prior to 1906?"

Mr. BAYLESS.—Yes.

The COURT.—Objection overruled.

Mr. GUNNISON.—We don't object to that question, your Honor.

Q. (By Mr. BAYLESS.) Do you know if anybody occupied that? A. In what year?

Q. Prior to 1906.

A. Well, there was—I think that Mr. James was occupying it for a while there, landing stuff when he had the Sheep Creek Mill.

Q. Had anybody else landed there? [72—32]

A. Well, in 1906 I think the Perseverance people landed some stuff on the beach there, built a little gridiron there and landed some stuff there.

Q. Well, from 1885 down to 1906, do you know the occupant of the property in dispute here where

(Testimony of Edward Webster.)

Mr. James has his gridiron?

A. The only one I know of was Mr. James. In 1884 I drove for Mr. James two piles there to tie up his scows to.

Mr. GUNNISON.—Q. In 1884?

A. 1894, I mean.

Mr. GUNNISON.—Q. 1904 you mean?

A. 1904, yes.

Q. (By Mr. BAYLESS.) In 1894 you drove some piles for Mr. James?

A. Yes, I drove two piles to tie up his scows to; there was nothing else on the beach there then.

The COURT.—Now, gentlemen, don't let a thing like that go into the record when you both know it is a mistake. We want the truth—we don't want these quibbles.

Q. It was in 1904 and not 1894.

A. (By the WITNESS.) 1904, yes.

Q. (By Mr. BAYLESS.) You don't know whether or not the Pacific Coast Company ever occupied this 113 feet, which is in dispute in this case at any time.

A. No, I don't think they ever did.

Mr. BAYLESS.—That is all.

Cross-examination.

(By Mr. GUNNISON.)

Q. Those piles which you drove in 1904, Mr. Webster,—I don't mean in 1904, I mean in 1887, were driven where.

A. One on the boundary line at the west end and one at the east end. [73—33]

(Testimony of Edward Webster.)

Q. That is, one on the boundary toward town and the other one the other way from town? A. Yes.

Q. Those were driven where with reference to the line of mean high tide?

A. Well, I would take it about a minimum tide.

Q. Minimum high? A. Yes.

Q. And I understand you to say that there were no marks of boundaries below that line when you came there that you are acquainted with—that you saw? A. No, we never—

Q. That you saw? A. No, not that I saw.

Q. What do you say with reference to whether or not those lines—those piles were used for mooring purposes?

A. Well, they weren't used to my knowledge; they were too far out.

Q. And you were in charge of that wharf from 1885 to what year? A. 1894.

Q. Now, when was the last time that wharf was used as a wharf site or for wharfing purposes?

A. Well, I think it was in 1905, if I remember correctly.

Q. Do you mean 1905? 1895—don't you mean 1895?

A. 1895, yes. It was the year the mill was built up in the basin.

Q. The Murray and Carroll wharf?

A. I don't understand you.

Q. I say—I understand you to say that the Alki was the last ship that docked and discharged at the Murray and Carroll wharf? [74—34]

A. That I remember of, yes.

(Testimony of Edward Webster.)

Q. When was that? A. In 1895.

Q. In 1895, yes, sir; and since that time it hasn't been used as a wharf? A. Not to my knowledge.

Q. Well, you have been a resident of Juneau during what period from 1885?

A. Well, I came here in 1881, to the present time.

Q. And during all that time you have lived here?

A. Yes.

Q. And you were connected with the wharf or had charge and were one of the owners of a pile driver?

A. Yes.

Q. Practically all that time?

A. Yes and no. I had—I used to hire the Treadwell pile-driver in the early days and in 1895 built a new one.

Q. What I mean to say is, you are familiar with the waterfront conditions in Juneau during all that period? A. Yes.

Q. And it is your recollection that that wharf hasn't been used—the old Murray and Carroll wharf has not been used since 1895?

A. Not for shipping purposes.

Q. For shipping purposes, I understand. Was it part of your duty as wharfinger to take the lines of the ship? A. Yes.

Q. And you helped moor most of the vessels that came in? A. Yes, sir.

Q. During the time you were wharfinger, did you?

A. Yes, sir

Mr. GUNNISON.—That is all. [75—35]

(Testimony of Edward Webster.)

Redirect Examination.

(By Mr. BAYLESS.)

Q. You are certain, Mr. Webster, that none of the vessels that came up here between 1885 and 1894 ran head or stern lines ashore?

Mr. GUNNISON.—I object to that.

The COURT.—I didn't understand the question.

Mr. BAYLESS.—I asked him during the period between 1885 and 1894 whether any of the vessels which tied up to the Carroll dock ran head or stern lines ashore.

The COURT.—What is your objection.

Mr. GUNNISON.—It is leading—object to it as leading and suggestive.

The COURT.—Objection overruled.

Q. (By Mr. BAYLESS.) None of these vessels which came up here while you had charge ran head or stern lines ashore?

A. I don't remember ever tying onto the shore or running lines out. It would take about 900 feet of line.

Mr. GUNNISON.—There is one more question I would like to ask. I presume it is properly cross-examination.

Mr. BAYLESS.—I am not quite through yet.

Mr. GUNNISON.—Well, it would be cross-examination and I wanted to ask permission to ask it.

Q. (By Mr. BAYLESS.) Did these vessels tie up to anything else except the wharf itself?

Mr. GUNNISON.—Same objection.

The COURT.—Objection overruled.

(Testimony of Edward Webster.)

A. I don't remember ever tying to the shore.

Q. Did they tie up to anything else? [76—36]

A. No, to the wharf.

Q. Nothing else?

A. Well, you see, there was piles along it, edge of the coal-house, still on the wharf—put the stern line there and the other line up the other side, but that still was the wharf part of it.

Q. How far from the face of the wharf were those piles? A. Which piles?

Q. These two piles you say they tied up to.

A. That was about 140 feet.

Q. Were those piles on the tide lands?

A. No; they were driven into the corner. One was just—it wasn't a pile; it was just a mooring we made there at the corner of the old dock—coal-house.

Q. Mr. Webster, will you show the Court where these vessels tied up? Just take a pencil and show how it was done.

A. (Indicating.) Right in here on this corner. Right there we had a business we connected to. That is all logs under that end.

The COURT.—This is the face?

A. Yes, and we had piles in here and here and here.

Mr. GUNNISON.—Just mark it so it will show, because the report doesn't show it very clearly.

A. Where I have marked with a cross was the mooring place. There is one there at the corner of the coal-house and one here. (Witness indicating on map.)

Q. (By Mr. BAYLESS.) That is to say, they

(Testimony of Edward Webster.)

tied up the vessels lying in front of the face of the dock with these six cross marks?

A. Yes. [77—37]

Q. And they didn't tie up these vessels at any other spot?

A. Yes, there was another one over there (indicating). There was—there one and that is the other one.

Q. This represents Mr. James, gridiron? (Indicating.)

A. That is about the position of them. These are the piles.

The COURT.—You have marked them all with an “X” and you have just now testified that you moored to the place marked “X.” Mark those two piles with an “O.”

Mr. GUNNISON.—If the Court please, this exhibit was used in the preliminary hearing and I think this “X” and this “X” were put on there by some one else.

A. (By the WITNESS.) That is where they were (indicating).

Q. (The COURT.) The round circles with a “X” in the middle. A. Yes, sir.

(Admitted and marked “Pltff's. Ex. #19.”)

Q. (By Mr. BAYLESS.) Did you say, Mr. Webster, that from 1885 until 1894 the Pacific Coast Company and its grantors had not been in possession of the ground in dispute in this case?

A. You didn't ask me that. I didn't say wasn't

(Testimony of Edward Webster.)

in possession. You asked me whether they had made any improvements.

Q. Well, do you know whether they were in possession of the property claimed by Mr. James?

Mr. GUNNISON.—Object to that as incompetent, irrelevant, and immaterial, and suggestive.

Mr. BAYLESS.—Already gone over by counsel.

The COURT.—The question is objectionable because it calls for a conclusion of the witness. What is possession? Ask him whether they had anything on it—what did they do with it—what sovereignty did they exercise over it. Possession is a question of law—depends upon the facts.

Mr. BAYLESS.—That is all. [78—38]

Recross-examination.

(By Mr. GUNNISON.)

Q. Just one question, your Honor. This is really cross-examination—I forgot it at the time. Did the wharf, the approach, or the T of the Murray and Carroll wharf extend over or upon the 113 feet in question in this case? A. It does not.

Q. Or did the building which you refer to as the coal-house on Plaintiff's Exhibit No. 19, or any other structures indicated on that map in connection with this wharf, project over or were they on any part of the 113 feet in question?

A. The building there is the present foundry.

Q. Even that isn't on the 113 feet?

A. No, there is a lot and a half in between there.

Mr. GUNNISON.—That is all.

(Witness excused.) [79—39]

[Testimony of C. W. Wells, for Plaintiff.]

C. W. WELLS, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination.

(By Mr. BAYLESS.)

Q. Just state your name and residence, Mr. Wells.

A. C. W. Wells. Well, I don't know whether I am living here or in Seattle—I am in both places now.

Q. When did you first come to Juneau?

A. Fall of '80; 5th day of December, 1880, I think.

Q. Well, how long did you reside in Juneau?

A. At that time I didn't stop only about four or five days. After I made locations up here by the Ebner property, I went back to Sitka and worked there all winter, and came back in April.

Q. In April, 1881? A. 4th of April, yes.

Q. Do you know the property known as the Carroll-Murray wharf site in Juneau?

A. I ought to; they owe me ninety dollars yet on it for the iron work.

Q. When did you first become acquainted with it?

A. Well, I became acquainted with it at the time Frank started the contract to build it.

Q. When was that?

A. It was in August or September, 1881.

Q. When was the wharf started to be built?

A. That was the fall it started to be built.

Q. 1881?

A. And it cost \$1,800 to build that wharf. [80—
40]

(Testimony of C. W. Wells.)

Q. When was the wharf completed?

A. I think it was in the spring of '82.

Q. Did the sea-going vessels land at that wharf?

A. They did, after the wharf was completed.

Q. How long was that wharf used as a wharf?

A. Well, it was used up to the time they built that new wharf in front of Main Street.

Q. Do you know when that was?

A. No, I couldn't exactly say, couldn't tell the year exactly.

Q. What buildings were put upon the wharf site and where were they situated?

A. Well, up to '83 there was one building and that was the main building on the wharf, extending out a little on the cribbing too quite a ways.

Q. Do you know the boundaries of that tract?

A. Yes, in a way I do.

Q. Do you know where those boundaries were?

A. Well, they were supposed to be 300 feet from center to center of the wharf.

Q. Do you know when those boundaries were first defined? A. I do.

Q. When was that?

A. In '83, fall of '83; I don't know whether the fall or August, '83, some time around there.

Q. Do you know how those boundaries were defined?

A. Defined by putting in two piles and I don't know whether they were put in with a pile-driver or sunk by men.

Q. Where were you when those piles were being

(Testimony of C. W. Wells.)

driven? A. At the shop here in Juneau.

Q. Did you ever see those piles?

A. Yes, sir. [81—41]

Q. Will you describe those piles to the Court, what they looked like?

A. Well, posts put in there to, I suppose to—

Mr. GUNNISON.—We object to anything he supposes—

A. Well, they were put in there—

Mr. GUNNISON.—Just a moment. We object to the testimony of the witness unless he testifies as to what he knows—not as to what he supposes or what they were supposed to be for.

A. I know that the boats tied up there.

Mr. GUNNISON.—Just a moment. The question was: What did those pile look like.

A. The piles were between twelve and fourteen inches, looked to me to be that, and about five or six feet above the ground.

Q. (By Mr. BAYLESS.) And where were those piles placed?

A. Put just far enough below high tide for a team to go past there.

Q. Do you know how those piles happened to be placed there? A. I do.

Q. How was that?

A. Well, there was some party talking about locating there. It was done at the time old man Edwards had charge of the wharf and I overheard a conversation and I told him he had better put something in there to define it and he says “I am going to get

(Testimony of C. W. Wells.)

Murray to put something there to tie up the boats to and it will do for boundary lines too." That is what he told me.

Q. I hand you Plaintiff's Exhibit No. 19, a map, and ask you if you can—

A. I don't know much about maps.

Q. If you can identify the old Carroll wharf site and the old [82—42] Murray-Carroll wharf buildings on that picture?

A. Yes, it is right here. Supposed to be about 40 by 60, around that—I never measured it.

Q. Do you know where—can you mark the position of these two piles?

A. There was one on the southwest corner, 300 feet from the center of the wharf down in here, and the other one up toward town 300 feet, pretty close to Pete Jumbo's cabin. He had a cabin on the upper side and it joined on Carroll's wharf site.

Q. Were those piles put on the tide lands? Do you know where they were put?

A. They were put in low enough to let a team pass.

Q. What I am trying to get at is, were those piles on tide lands?

A. Yes, on tide lands. Covered a good deal when it was high water, these piles wouldn't be, but the ground was covered.

Q. Do you know how these vessels which came to Juneau in the early days—which ships came to Juneau in the early days and how they tied up?

A. There was no boats come here but the Pacific

(Testimony of C. W. Wells.)

Coast Steamship Company that I know of.

Q. Were those vessels tied up to the wharf after the wharf was built.

A. Not for a year afterwards. They tied up on long lines to stumps. I have seen them take lines ashore on a boat and tie them on shore on a stump there—throw a line over a stump.

Q. Well, where were those stumps situated?

A. Some on the south side of the wharf and some on the north side.

Q. Where were they with reference to these piles you have just testified to? [83—43]

A. Higher up the bank.

Q. Were they close to these piles or far away?

A. Twenty-five or thirty feet or so.

Q. After these piles were driven were they used for any purpose?

A. I repeatedly seen them take a small boat and take it over to the pile and throw it over.

Q. Do you know where Mr. James' gridiron is now?

A. I don't know whose it is, but I know there is a gridiron down there.

Q. Well, did one of these piles stand anywhere near that gridiron?

A. Stood pretty close to Charley Norstrader's wharf there. The gridiron—the plank road there now would cover it.

Q. Well, how did they get a line ashore to that post?

A. In a small boat. Couldn't possibly get it any

(Testimony of C. W. Wells.)

other way, because the wharf building was so close up to the bank.

Q. How did they get the line ashore to the one on the other side?

A. Same way; had to take it there, around just the same. Sometimes they tied up to the wharf when it wasn't rough weather, but when they had a large amount of freight they put out a line that way.

Q. Was this done prior to May 17, 1884?

Mr. GUNNISON.—Object to that as leading.

A. Well, it was done to my knowledge in '83; that was the fall of '83 while Edwards had charge of the wharf.

Q. Was it done prior to '83?

A. I couldn't say.

Mr. GUNNISON.—Object to that as leading.

The COURT.—Just a moment. Don't ask him leading questions about things that go to the gist of the controversy. This witness answers leading questions before the Court can warn him. Don't ask leading questions about a matter that is a part of the controversy. [84—44]

Q. (By Mr. BAYLESS.) Mr. Wells, was the—do you know how long the practice of mooring vessels by—
A. The what?

Q. Tying up the vessels to the wharf by means of these head and stern lines ashore was followed?

Mr. GUNNISON.—Just a minute. We object to that as incompetent, irrelevant, and immaterial; there is no evidence of any practice.

The COURT.—The question is competent, but the

(Testimony of C. W. Wells.)

last part of the objection will be sustained. There is no evidence that there was any practice. This witness hasn't testified to that. You might ask him how many times it was done, how often he had seen it done, but don't use the word practice. There is no testimony that there was any practice.

Q. (By Mr. BAYLESS.) Where did the vessels which came to Juneau until 1894 land?

A. Landed? Sometimes landed out in the channel.

Q. Was there any other wharf besides the Carroll wharf here?

A. No, sir, there wasn't, and they loaded freight on the scows here before the wharf was built.

Q. During this time how did they tie up to the dock?

A. No vessel tied up to the dock when they loaded on scows.

Q. I mean after the wharf was built until they moved over to the new wharf—how did these vessels tie up to the dock?

A. Well, it is pretty hard for me to remember back thirty-three years how they tied up to the wharf. Sometimes they would tie up with the bow south and sometimes with the bow north.

Q. How much of the time did they run lines ashore?

A. That I couldn't say. I seen it most every time I went down there. I had occasion to go down there to look after my [85—45] freight and the purser, McDonald, always attended to my business.

(Testimony of C. W. Wells.)

Q. Was that done by all the boats which landed at the dock?

A. Well, I couldn't say with reference to all the boats or not, but I have seen it done repeatedly with the "Idaho," the old "Anchon" and—no, I don't believe the "California" tied up there; she might have done so as far as I know of; the "Idaho"—that was the boat Captain Hunter was on.

Q. Well, the boats which came up in 1882 and 1883 tied up in that way?

A. Yes, I have seen them take lines ashore repeatedly in small boats and throw them over those piles that was driven. I don't know whether they were driven or whether they dug holes and sunk the posts.

Q. And that was done all the time the wharf was used?

Mr. GUNNISON.—Object to that question as leading and suggestive—directly contrary to the caution of the Court.

The COURT.—Yes, I think so.

Q. (By Mr. BAYLESS.) Well now, Mr. Wells, what was done with reference to tying up the boats between 1882 and 1894?

A. Well, they would come there and land. They had three piles on the back end of the wing, on each end of the wing; they would sometimes tie up to that, but when it was bad weather or the boat was going to stop all night, they would most always go over to those piles in a small boat with the line.

Q. Was that done in 1894?

A. Yes, it was I think—yes, I am positive it was

(Testimony of C. W. Wells.)

done in 1894, in 1893, fall of '93.

Q. Now, Mr. Wells, was anybody outside of the Pacific Coast Company using this wharf site during that time?

A. That I couldn't say. [86—46]

Mr. GUNNISON.—We object to that as irrelevant, incompetent, and immaterial, and too general. It should be confined to the ground in controversy.

The COURT.—Confine it to the ground in controversy, Mr. Bayless.

Q. (By Mr. BAYLESS.) Mr. Wells, from 1882 down until they moved over to the new wharf, which was in 1894, did anybody occupy the ground now claimed by Mr. James?

A. No, not that I know of, only the Carroll wharf site 600 feet square there.

Mr. GUNNISON.—We object to that as irrelevant, incompetent, and immaterial.

The COURT.—There is no evidence that he knows what ground is claimed. Ask him what the ground in dispute is. Then you may ask him whether or not anybody occupied it between the dates in question.

Mr. BAYLESS.—I thought I had done all that.

The COURT.—No, you didn't.

Q. (By Mr. BAYLESS.) You know where this gridiron is? (Referring to map.)

A. Yes, close to that old foundry.

Q. Do you know who claims that ground?

A. Well, I suppose Mr. James does.

(Testimony of C. W. Wells.)

Q. How long have you been acquainted with that ground there?

A. I have been acquainted with that ground since the spring of '80.

Q. Is that ground part of the old Carroll wharf site? A. Yes, sir.

Q. Was anybody occupying that ground in 1880?

A. No, sir, not unless it was a man in a small boat getting an outfit out to go out prospecting. [87—47]

Q. Was anybody occupying it in 1881?

A. No, only Indians.

Q. Was anybody occupying it during the years 1882 to 1894?

A. Nothing except for Frank Starr to get his piles there to get ready to drive.

Q. Who was Frank Starr?

A. The man who started to build the wharf for Carroll.

Q. Was this property used in any way in connection with the wharf?

A. It was used for piles and for tying up the boats.

Q. Was it used for that purpose from the time the wharf was built until the time the wharf was abandoned as a wharf?

Mr. GUNNISON.—Object to that as suggestive.

The COURT.—It is grossly leading.

Mr. BAYLESS.—That is all.

Cross-examination.

(By Mr. GUNNISON.)

Q. Mr. Wells, you came here in 1880?

(Testimony of C. W. Wells.)

A. Fall of '80, yes.

Q. And returned in the spring of 1881?

A. Yes.

Q. How old were you then, Mr. Wells?

A. Well, I was about thirty-three years old.

Q. Now, what was your—what business were you engaged in at that time?

A. Mining and blacksmithing, both.

Q. You had a shop here in town?

A. I did. [88—48]

Q. Where was it?

A. Right where the Juneau Liquor Company's store is now.

Q. Now, you said you had an arrangement with Mr. McDonald, the purser of the "Idaho," to attend to your business matters for you in Portland?

A. Yes, sir.

Q. And you went to see the "Idaho" land each time?

A. Well, I would go down every boat; I would go to get my stuff; I would go down to get a list of my freight.

Q. Every boat that came?

A. Yes, whenever I sent for it.

Q. Did you have shipments on every boat?

A. Well, more or less,—coal—we only got a boat a month.

Q. How often did the "Idaho" come up?

A. About once a month.

Q. How large was she?

A. Oh, I don't know; I never measured her.

(Testimony of C. W. Wells.)

Q. Was she over 200 feet? A. I couldn't say.

Q. Do you know how far she projected over the face of the wharf?

A. Well, she might go probably 60 feet at each end, each way.

Q. Now, how often is it your recollection would they take stern and bow lines ashore and moor to those piles which you have described?

A. How often?

Q. Yes, sir.

A. I couldn't tell you how often, but I repeatedly seen them do it.

Q. I think you said up to 1883 they took the lines ashore and fastened them on stumps.

A. Yes, I seen them put them on stumps. [89—49]

Q. Those stumps were above the line of high tide?

A. They were up on the bank.

Q. How far were they from that center pin or stake in the Murray-Carroll wharf site?

A. They might be 150 or 200 feet.

Q. On either side? A. On each side.

Q. Now, in 1883 and 1884 what was there on the south side of the Murray and Carroll wharf?

A. There was Indians.

Q. How far down did their town go?

A. The town went down as far as the old butcher-shop was.

Q. About where the sawmill is?

A. No, didn't go down that far. Not any further than the gasoline-house is there.

(Testimony of C. W. Wells.)

Q. Was there any road down there then?

A. Just as nature made it.

Q. No wagon road below there?

A. You could drive a wagon there.

Q. But there was no road there? A. No.

Q. What was there below there that made it necessary to drive wagons?

A. Well, I didn't say they drove wagons, but they drove wagons to the wharf.

Q. Certainly. Now, do you know who the wharfinger was after 1884 at the Murray and Carroll wharf?

A. I think there was a man a short time before Mr. Webster had it.

Q. Mr. Webster was wharfinger there for a long time? A. Oh, I know he was.

Q. Now, how often did you go during that time to which you have [90—50] testified below the wharf, that is, south of the wharf?

A. How often did I go?

Q. Yes.

A. Oh, I would probably go down that way three or four times a week.

Q. And when a vessel was in port did you go below or would your journey end at the wharf?

A. My journey ended at the wharf. Of course, as far as that is concerned,—

Q. What I am getting at is, how much occasion or how often did you have occasion to go down far enough to see the method of mooring vessels by stern or bow lines to these piles?

(Testimony of C. W. Wells.)

A. I could see that from the boat itself.

Q. From the boat?

A. Yes, you could see it from the wharf without a man shut his eyes.

Q. Now, there was a boat a month.

A. Yes, a boat a month.

Q. And every time a boat came here they moored at that place, did you say?

A. I didn't say every time.

Q. How often?

A. I say when they had a lot of freight to discharge they moored that way.

Q. You mean after they had moored the vessel so as to discharge from a forward or after hatch, when they had moved it so that they couldn't hold both the bow and stern to the wharf, after they moved her back—moved her astern—they took the stern line ashore, so there was more of the vessel on one side?

A. They took the stern line ashore. [91—51]

Q. Well, when a vessel lay fairly in front of the wharf, the "Idaho" and "Anchon," would they moor to these piles in ordinary weather?

A. Not in ordinary weather, wouldn't have to.

Q. Wasn't necessary, was it?

A. No, not in ordinary weather, but when they had lots of freight or rough weather they always moored there.

Q. But the mooring in rough weather there was for the precaution—safety of the ship?

A. Certainly, I suppose it was.

Q. Mr. Wells, between the times—I will withdraw

(Testimony of C. W. Wells.)

that question. You say there was about a vessel a month? A. Just about.

Q. As you recall it. Now, to what use was the ground to the south, the beach, the tide lands to the south of the Murray-Carroll wharf put between the times those vessels arrived and departed—I mean between the departure of one vessel and the arrival of another—between the years 1881 and 1894?

Mr. BAYLESS.—Object to that as immaterial.

A. Well, I do not know; they may have used it for several things as far as I know.

Q. I am asking what you know.

A. I don't know what it was used for only just for mooring boats.

Q. And you never saw the owners of the wharf site use it for any other purpose?

A. Only when driving the wharf they had piles around there.

Q. That was in 1882? A. Yes, sir.

Q. Other than that there was no use of that other than an occasional mooring of vessels in bad weather. [92—52]

A. Yes, that is all I know of.

Q. You say you know where the gridiron of Mr. James is on the waterfront? A. Yes, sir, I do.

Q. Did any portion of the wharf, the approach, the T, or face of the wharf, or any of the wharf buildings extend over the ground occupied by that gridiron and its approach, or in front of that gridiron or its approach?

A. Well, it occupied where this pile was drove,

(Testimony of C. W. Wells.)

interfered with that.

Q. You mean that if they attempted to moor a boat there now it would interfere with it? A. Yes.

Q. But you don't mean to say that either the wharf or approach was on any part of the gridiron or in front of that?

A. Only the pile. Of course, you couldn't get a rope ashore there—you couldn't take the hawser now and throw it on the pile, because that would be in the way.

Q. Do you know when that was put in?

A. What, the pile?

Q. No, this gridiron.

A. Well, I have a faint recollection, but I couldn't say exactly the year.

Q. I am asking you now whether the wharf itself, the old Murray and Carroll wharf, or any of the buildings connected with the Murray and Carroll wharf, were on any part of the tide flats which are now either occupied by Mr. James' gridiron or on the tide flats in front of it?

A. I don't think there was. I don't believe the wing extended out that far; it would come pretty close to it, that is, where the molding is now. [93—53]

Q. Did that wharf extend straight out from that center stake?

A. Well, the center stake was under a great big stump right in front on the upper side of the road, as far as I can recollect.

Q. The stake was in what was supposed to be the center.

(Testimony of C. W. Wells.)

A. It was supposed to be the center of the wharf site, as near as I can recollect.

Q. And the wharf went straight out at right angles from the shore from that point.

A. Well, it might vary a little and may not.

Q. What is your recollection?

A. Well, I think it was pretty near straight out.

Q. And you say the wharf was about how wide—how wide was the face of it?

A. Well, I think the T was something like 60 feet long and about 40 feet wide.

Q. That is, the face would be about 60 feet long?

A. About 60 feet long, yes.

Q. So that would be 30 feet on each side of the stake if that went out straight?

A. Yes, if the wharf went out straight.

Q. Mr. Bayless asked you if you knew what ground was claimed by Mr. Webster.

A. Was claimed by Mr. Webster?

Q. I don't mean Webster, I mean Mr. James.

A. Well, I suppose the ground was claimed there where he has got that gridiron.

Q. Do you know how long he has claimed it?

A. I forgot how many years now. I remember it was on there quite a while.

Q. You haven't any recollection as to how long he used it? [94—54]

A. No, I couldn't say—five or six or seven years.

Mr. BAYLESS.—I object to that as improper cross-examination.

Mr. GUNNISON.—That may be our case in chief.

The COURT.—Yes, I think so, Judge Gunnison.

(Testimony of C. W. Wells.)

Mr. GUNNISON.—I will withdraw that. That is all.

Redirect Examination.

(By Mr. BAYLESS.)

Q. Mr. Wells, was it possible to tie up these vessels which docked at the Carroll wharf in rough weather except to the dock itself?

Mr. GUNNISON.—Object to that question on the ground that it is irrelevant, incompetent, and immaterial, and that counsel has not qualified Mr. Wells to answer any such question.

The COURT.—Objection sustained.

Q. (By Mr. BAYLESS.) Mr. Wells, in rough weather how would all these vessels tie up?

A. How?

Q. Yes. Say when the weather was rough and the wind blowing, how would these vessels tie up at the Carroll wharf?

Mr. GUNNISON.—Object to the question on the ground that it is irrelevant, incompetent, and immaterial.

The COURT.—The question is objectionable because it is a repetition. You have gone all over that on your direct examination. Ask him another question.

Q. (By Mr. BAYLESS.) Mr. Wells, did you ever hear of anyone making a claim of ownership to the tide lands in dispute in this case adverse to the Pacific Coast Company? [95—55]

Mr. GUNNISON.—We object to that question as irrelevant, incompetent, and immaterial.

(Testimony of C. W. Wells.)

The COURT.—Objection sustained.

Q. (By Mr. BAYLESS.) Do you know whether or not the Pacific Coast Company and its grantors, Captain Carroll and others, claimed the property in dispute from 1881 down to date?

A. Down to date?

Q. Down to the present time.

Mr. GUNNISON.—Wait a minute, Mr. Wells. We object to that question on the ground that it is irrelevant, incompetent, and immaterial, and not the best evidence.

The COURT.—Objection sustained.

Mr. BAYLESS.—If the Court please, I think we are entitled to prove that our predecessors in interest, of the plaintiff company, made claim of ownership prior to May 17, 1884, the date of the Act.

The COURT.—Yes, but you didn't ask him that question. You asked him regarding all the time from 1881 to the present time. If you confine your question as to whether or not they claimed it—and he knows they claimed it—from 1881 to the passage of the Act of 1884, another question might be presented, because the Act of Congress says "persons claiming," but when you ask the question embracing all the time from 1881 to the present time—"Do you know whether they claimed it?"—I sustain the objection.

Q. (By Mr. BAYLESS.) Do you know whether or not Captain Murray and Captain Carroll and the people who owned this wharf site and claimed to own it from 1881 until after 1884?

(Testimony of C. W. Wells.)

Mr. GUNNISON.—We object to the question on the ground that it is irrelevant, incompetent, and immaterial, and not the best evidence [96—56]

The COURT.—From 1881, the time they built it, to the Act of, I think it is, May 20, 1884.

Mr. BAYLESS.—May 17, 1884.

The COURT.—I will allow you to ask the question if he knows who claimed that property between 1881 and May 17, 1884. Now, as to who claimed it after that time is not competent and I will rule out any question such as that.

Q. (By Mr. BAYLESS.) Do you know who claimed this piece of property between March, 1881, and May 17, 1884?

Mr. GUNNISON.—We ask the witness to answer that either yes or no.

The COURT.—The question is whether you know who claimed it—you can answer it yes or no.

A. (By the WITNESS.) Yes, sir, I do.

Q. Who was it? Who claimed it?

Mr. GUNNISON.—Object to it on the ground that it is irrelevant, incompetent, and immaterial, and not the best evidence.

The COURT.—Objection overruled.

Q. (By Mr. BAYLESS.) Who claimed it?

A. Murray.

Q. During all that time? A. Yes.

Mr. BAYLESS.—Your Honor will not allow me to ask who claimed it after that date?

The COURT.—No.

Mr. BAYLESS.—That is all, I think, Mr. Wells.

(Testimony of C. W. Wells.)

Recross-examination.

(By Mr. GUNNISON.)

Q. How do you know that Murray and Carroll claimed that ground [97—57] between 1881 and 1884? Wait a minute, counsel isn't here.

The COURT.—Well, proceed with the case, Judge Gunnison. Counsel knows the case is being tried, and if he goes away he will have to take the consequences. (Counsel returns.)

Q. How do you know that Murray and Carroll claimed that ground, the ground in controversy; that is, the 113 feet in controversy, between 1881 and 1884?

A. By getting my money from them, payments for what work I did there.

Q. What work did you do?

A. I done all the iron work.

Q. On what? A. On the wharf.

Q. You say that wharf didn't extend over that ground in controversy?

A. Oh, I don't mean that; I mean the 600 feet—the width on the face of the tide land they claimed at that time.

Q. How do you know they claimed it?

A. Well, that is what he put in those posts for.

Q. Who put in those posts?

A. Carroll, to show his boundary line.

Q. How do you know they were to show the boundary line? A. He told me he did.

Q. Do you know whether he put them in himself?

A. Martin Murray put them in.

(Testimony of C. W. Wells.)

Q. I thought you said Carroll.

A. No, sir, his partner Murray.

Q. And Carroll told you?

A. He said he would see that Murray put them in. [98—58]

Q. When was that? A. In '83.

Q. And you are sure those piles were put in in 1883?

A. Yes, sir, those two piles were put in '83 some time.

Q. Do you know who drove the piles?

A. I didn't say they were drove; they might have been dug.

Q. Who put them in? A. I don't know.

Q. If those piles weren't put in until 1887—

A. Then they wouldn't need any piles at all if they didn't put them in before '87; could tie up with—

Q. They were put in to mark the boundary?

A. Put in to mark the boundary and tie the boats to.

Q. And you say you know that Carroll and Murray claimed that ground because they paid you for your work? A. They claimed the wharf site.

Q. And that is the basis of your knowledge of the wharf site?

A. That is all I know about it. They told me themselves they owned it.

Q. Did they ever go with you and mark out the boundaries?

A. They never did because I didn't have anything

(Testimony of C. W. Wells.)

to do with the wharf—all my work was in town and up in the basin.

Q. And your knowledge of that is only what somebody told you?

A. What they told me themselves.

Q. But they told you they were going to put in some piles?

A. I told them they had better put some posts in and he said he was going to have some posts put in anyhow to anchor his boats to.

Q. Then after that there was some piles put in?

A. Two piles put in, one at each side, I said.
[99—59]

Q. Certainly—I don't want to have any controversy with you, Mr. Wells.

A. I am here to tell the truth.

Q. I am not asking you not to.

A. Because I know what I am going to tell.

Q. Those piles that you saw put in there—did either Mr. Murray or Mr. Carroll take you out and say, "These are the piles I had put in and set"?

A. Carroll showed me the piles himself.

Q. He did, afterward?

A. After they put those piles in.

Q. After you had a talk with him? A. Yes, sir.

Q. That was in the fall of 1883?

A. '83, yes, sir.

Q. That was the time—when was it you said the wharf was built?

A. Well, the wharf was started in '81.

Q. And finished in 1882?

(Testimony of C. W. Wells.)

A. Spring of '82 and Neil McArthur came over here.

Q. And you think the old "Idaho" extended about 60 feet on each side of the wharf?

A. Might have been 60 or more, I couldn't say—I never took her dimensions.

Q. But she is the ship—

A. And her and the "Anchon"—

Q. What was about the size of the "Anchon"?

A. I suppose it was about the same width as the "Idaho."

Q. And it was from those two vessels that the bow and stern lines were taken ashore and fastened to these piles?

A. Yes, the "California" and the "Eureka," she was there—Captain Hunter was on her. [100—60]

Q. Did you read the testimony of Captain Hunter in this case before you took the stand?

A. No, sir. I never knew anything about the case until a day or two ago.

Mr. GUNNISON.—That is all.

(Witness excused.) [101—61]

Mr. BAYLESS.—If the Court please, I have a couple depositions here, Captain Hunter's and another, which I would like to read.

Mr. GUNNISON.—That Captain Hunter deposition was the one we took here.

The COURT.—Taken in open court. I don't think so, Mr. Bayless, you took it before me.

Mr. BAYLESS.—Very well, it hasn't been read.

(Testimony of C. W. Wells.)

Mr. GUNNISON.—It was taken under stipulation.

Mr. BAYLESS.—If the Court please, the matter reads:

“If the Court please, in the matter of the case of the Pacific Coast Co. vs. George E. James, Captain J. C. Hunter is present and I desire to have his testimony taken at this time and I think it may be stipulated that the testimony of Captain Hunter may be taken in open court at this time and used at the trial of the case.

The COURT.—Not in open court. I am willing to hear the testimony of Captain Hunter, if you gentlemen stipulate that the record may be made up and used at the trial, but not taken as in open court.” And down further: “The testimony is being taken before me just as if it were before a notary public.”

The COURT.—I guess that is right, Judge Gunnison.

Mr. GUNNISON.—Well, I haven't any objection to the introduction of it.

Mr. GUNNISON.—This deposition of Captain Lloyd, if your Honor please, I haven't seen and I would like to have a few moments to read it over so I might know whether to interpose an objection.
[102—62]

The COURT.—How long has it been on file?

Mr. BAYLESS.—I do not know, your Honor.

The COURT.—Ever since June 10, 1914, this deposition has been on file here. Either one of you could have read it at any time.

(Testimony of C. W. Wells.)

Mr. GUNNISON.—Your Honor remembers I left here for Skagway and was gone nearly a month.

The COURT.—Yes, but you had a partner here.

Mr. GUNNISON.—Yes, but my partner was in Skagway with me.

The COURT.—Well, we will take a recess for ten minutes.

(Whereupon the Court took a recess for 10 minutes.)

C. W. WELLS, being recalled to the stand on behalf of the plaintiff, testified as follows:

Direct Examination.

(By Mr. BAYLESS.)

Q. Mr. Wells, I hand you a map which purports to show the situation of the old Carroll dock and other property, and I ask you if the diagram showing the “City of Topeka” lying up at the old wharf is the way the “Topeka” was sometimes moored and other vessels were sometimes moored?

Mr. GUNNISON.—We object to the question in the first place as leading and suggestive; in the next place, there is no evidence that this witness ever saw the “Topeka” there or knows how she was moored, or knows her dimensions, and further that the statement of counsel that that purports to represent something is an improper statement and the witness, if he testifies to the character of the map, should be asked to testify to what it is and to identify it himself or explain it and say from an examination of it whether he knows what it represents.

(Testimony of C. W. Wells.)

Mr. BAYLESS.—The witness has already testified that that was done and I merely offer that picture as an illustration of the witness' testimony.

Mr. GUNNISON.—That is a map; that isn't a picture.

Mr. BAYLESS.—I haven't proven the accuracy of the map, Judge, at all. I merely use it as a picture.

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception.

Q. (By Mr. BAYLESS.) Is that the way the "City of Topeka" used to land there at the old wharf?

Mr. GUNNISON.—We object to that as leading and suggestive, incompetent, irrelevant, and immaterial. There is no evidence that he knows the "Topeka" or saw her land there.

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception.

A. (By the WITNESS.) Well, of course, the "City of Topeka" wasn't running in '94; you know the "Alki"—

Mr. GUNNISON.—We object and ask to have the testimony stricken.

A. The "Topeka"—

The COURT.—Just a moment. You say the "Topeka" wasn't running in 1894?

A. She wasn't running in 93, or 94, or '92, but she had tied up similar to that.

The COURT.—Q. To that same wharf?

A. Yes.

(Testimony of C. W. Wells.)

The COURT.—Motion denied.

Mr. GUNNISON.—Exception.

Q. (By Mr. BAYLESS.) Was that the way the ships were moored?

A. That is the way the “Anchon” and the “Idaho” used to moor and any one would be blind without he could see them, see those boats. [104—64]

Q. What are these red lines represented on here? (Indicating.)

A. They represent the lines taken ashore and put on those piles, and they were champered down—

Q. What were champered down?

A. The piles, so the rope would slip over them easily.

Q. And the boats which came up to Juneau between 1881 and May, 17, 1884, tied up at the Carroll wharf, did they tie up the same way?

A. In the same way.

Mr. GUNNISON.—We object to that as irrelevant, incompetent, and immaterial, leading and suggestive.

The COURT.—It is very leading, of course, but he has gone so far with it.

Mr. BAYLESS.—This has been all gone over.

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception.

Mr. BAYLESS.—We now offer this map in evidence.

Mr. GUNNISON.—Object to the map as incompetent, irrelevant, and immaterial, hasn't been tes-

(Testimony of C. W. Wells.)

tified to as a correct map of the location there and might be an attempt to get something in evidence of which there is no evidence.

The COURT.—I don't understand the map is offered as anything but illustrative of what he means when he speaks about the ships being moored to these piles.

Mr. BAYLESS.—For no other purpose.

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception.

Mr. BAYLESS.—That is all, Mr. Wells. [105—
65]

Cross-examination.

(By Mr. GUNNISON.)

Q. When did the Topeka first land at the Murray and Carroll wharf?

A. I think it was the fall of 1890 or 1889. Why I know is, that it was the time of the fire in Seattle, the same fall that the "Alki" broke her back down here at Loring.

Q. Do you know anything about the dimensions of the "Topeka"? A. No, I do not.

Q. You don't mean to say that that representation on that map is correct with reference—that the representation which counsel indicated as the "Topeka," is correct according to scale or dimensions, or anything of that kind?

A. No, I don't know anything about that, but they tied up something similar to that and the other boats, the "Idaho" and "Anchon" and "California."

Q. You don't mean to say now that the "To-

(Testimony of C. W. Wells.)

peka's" dimensions are correctly put on there, do you?

A. I don't say about the "Topeka," but I say about the others.

Q. But you say that is the way they tied the bow and stern line of the boat? A. Yes.

Mr. GUNNISON.—We move to strike the map on the ground that it is incompetent, irrelevant, and immaterial, and the witness testifies the "Topeka" wasn't here until 1889 and there isn't any evidence that it is a correct representation of even the dimensions of the "Topeka."

The COURT.—Motion will be denied.

Mr. GUNNISON.—Exception.

(Admitted in evidence and marked: "Plaintiff's Ex. #20.")

(Witness excused.) [106—66]

Mr. BAYLESS.—I now offer to read the deposition of Captain H. H. Lloyd. The stipulation to take Captain Lloyd's deposition before L. V. Newcomb, a Notary Public in Seattle, Washington, was entered into on the 19th of May, 1914, by counsel for the plaintiff and the defendant.

[Deposition of Captain H. H. Lloyd, for Plaintiff.]

Interrogatory No. 1. Please state your name, residence and age.

A. H. H. Lloyd; residence, Seattle; age 75.

Interrogatory No. 2. What has been your occupation or profession? A. Master mariner.

Interrogatory No. 3. Are you engaged in any occupation or profession at the present time?

(Deposition of Capt. H. H. Lloyd.)

A. No.

Interrogatory No. 4. When did you retire?

A. About 1907.

Interrogatory No. 5. What was your occupation or profession in the years 1882, 1883 and 1884?

A. Master mariner, except in 1882.

Interrogatory No. 6. By whom or by what company were you employed?

A. I was U. S. Inspector afloat, employed between Portland, Oregon, and Alaska Ports, the year before Captain J. C. Hunter came to Juneau as master of the "S. S. Idaho." My best recollection is that Captain Hunter came to Juneau on the "S. S. Idaho" in the spring of 1884; at least it was in the spring of the year 1884, or 1885, that Hunter came to Juneau, and I became U. S. Inspector afloat, as above stated, the October before. I continued to be inspector for about nine months, and immediately thereafter I became a pilot and master on steamships of the Pacific Coast Company plying between Portland, Seattle, Juneau and other Alaskan ports. Part of the time I acted as master and part of the time as pilot, until the year 1907, [107—67] continuously, plying between ports on the west coast of the U. S. and Juneau and other Alaska ports, and as far north as Nome.

Interrogatory No. 7. Please state what ships you sailed on in the years 1882, 1883 and 1884 and the official position you occupied on such ships.

A. I did not sail on any ship in the year 1882. It was in the year 1883 or at the latest in the spring

(Deposition of Capt. H. H. Lloyd.)

of 1884, that I was U. S. Inspector on the "S. S. Idaho," "Carroll," "Master," and on the "S. S. Ancon" and then back to the "S. S. Idaho," of which Captain Hunter had become master. Those ships plied between Portland, Juneau, Sitka and other Alaskan points, and my services as inspector on those ships continued for about nine months. Immediately thereafter I became Pilot on the "S. S. Ancon" and continued to be master or pilot continuously from that time until 1907, plying between said points on various ships.

Interrogatory No. 8. Did you sail on any such ships to Juneau, Alaska, in the years 1882, 1883 and 1884? If so, state what ships and what position you occupied on the same and give the dates as near as you can.

A. As stated above, in the year 1883 and 1884, I sailed on the "S. S. Idaho" and "Ancon" between Portland and Juneau, as U. S. Inspector, and as master and pilot.

Interrogatory No. 9. Where did such ships land in Juneau in the years 1882, 1883 and 1884?

A. In 1883 and 1884 the ships above-mentioned landed at what was known at that time as the Carroll-Murray wharf.

Interrogatory No. 10. Please describe the Carroll-Murray wharf and wharf site as it existed on your first voyage to Juneau, Alaska. [108—68]

A. The said wharf consisted of a warehouse and wharf extending from the line of high tide out into the water, a distance of about 250 feet, as near as I

(Deposition of Capt. H. H. Lloyd.)

can recall. The wharf was a crib wharf. The outer part or face of the dock was in about 20 feet of water at low tide. The wharf and warehouse were substantial structures and amply large enough to answer all the demands of commerce at that time.

The COURT.—Just a moment. I don't see the necessity of reading all this. Just introduce it and file it. I have got to read it anyhow. I have to read all depositions that are put in. If you have any objections to any particular part of it, I will hear those objections now.

Mr. GUNNISON.—We object to two or three of those questions. Perhaps we will save time if we wait until to-morrow morning and I can read it over and make my objections then.

The COURT.—I will give you till to-morrow morning to make your objections and to-morrow morning I will pass on the objections and strike out what I think ought to be stricken.

Mr. BAYLESS.—We offer the deposition of Captain Lloyd in evidence, together with the map attached to it and the stipulation.

Mr. GUNNISON.—We reserve our right to make objections till to-morrow morning.

The COURT.—Very well. [109—69]

[Testimony of S. H. Ewing, for Plaintiff.]

S. H. EWING, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination.

(By Mr. BAYLESS.)

Q. State your name, residence and occupation.

(Testimony of S. H. Ewing.)

A. S. Howard Ewing, Agent Pacific Coast Company, Juneau, Alaska.

Q. When did you first come to Juneau, Mr. Ewing? A. 1897.

Q. How long have you been agent of the Pacific Coast Company? A. Going on four years.

Q. You have been here four years as agent?

A. Yes, sir.

Q. What have your duties been as agent?

A. Looking after the Pacific Coast Company's interests and also the Pacific Coast Steamship Company's interests in the town, looking after various lands, buildings, properties.

Q. Do you know the property in dispute between Mr. James and the Pacific Coast Co.? A. I do.

Q. Do you know where it is situated? A. I do.

Q. Where is it situated?

A. Situated along the water front on Franklin Street there.

Q. With reference to the Carroll-Murray wharf site—do you know where the Carroll-Murray wharf was?

A. Yes. It is to the south of the old Carroll-Murray wharf.

Q. Is it within the exterior boundary of the Carroll-Murray wharf site? A. It is. [110—70]

Q. Do you know what the plans of the Pacific Coast Company are with reference to reconstructing the Carroll-Murray wharf? A. I do.

Q. State what they are.

Mr. GUNNISON.—We object to that as irrele-

(Testimony of S. H. Ewing.)

vant, incompetent and immaterial, and whatever plans they have are self-serving declarations and are not in any way binding upon this defendant.

The COURT.—On what theory, Mr. Bayless?

Mr. BAYLESS.—On the question of irreparable injury, if the Court please. We propose to show that we anticipate building a big dock to cover the whole face of this ground, and the reason we haven't built it before this time is because of this lawsuit, and I want Mr. Ewing to testify to that.

The COURT.—It seems to me, Judge Gunnison, that on that phase of the case it is admissible.

Mr. BAYLESS.—That is the only purpose.

A. The plan is to construct a wharf approximately 600 feet long—

Mr. GUNNISON.—We don't withdraw our objection.

A. On the old Murray-Carroll wharf site, erect a warehouse, coal bunkers, and other buildings.

Q. (By Mr. BAYLESS.) I hand you a map or plan and ask you to identify it.

A. This plan came from Seattle. It is the company's plan.

Q. Of what?

A. The proposed wharf, warehouse, coal bunkers and other buildings.

Q. How big did you say that wharf would be?

A. Approximately 600 feet in length.

Q. On the face?

A. On the face, yes. [111—71]

(Testimony of S. H. Ewing.)

Q. And how many buildings will there be on that wharf?

A. The main warehouse and the coal bunkers and there will be a space for a cold storage plant, and other buildings they want to put on there.

Q. How much will that wharf cost?

Mr. GUNNISON.—We object to that as irrelevant, incompetent and immaterial. The witness hasn't been qualified to give any testimony on that subject.

The COURT.—I don't think it is material how much the wharf is going to cost.

Mr. BAYLISS.—I want to advise your Honor as to the extent of these improvements.

The COURT.—Yes, but they are contemplated improvements.

Mr. BAYLISS.—Why certainly.

The COURT.—What difference does it make if it contemplates building a wharf whether it cost \$50,000 or \$10,000?

Q. (By Mr. BAYLISS.) Do you know the reason why this wharf hasn't been driven or built?

Mr. GUNNISON.—We object to that question as irrelevant, incompetent and immaterial.

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception. I ask that he answer that yes or no.

A. (By the WITNESS.) Yes.

Q. What is the reason?

Mr. GUNNISON.—Same objection.

The COURT.—Same ruling.

(Testimony of S. H. Ewing.)

A. They were held up on account of the lawsuit with James on that disputed piece of ground down there.

Q. (By Mr. BAYLESS.) If this lawsuit is decided favorably to the company, what will happen?
[112—72]

Mr. GUNNISON.—Object to that as irrelevant, incompetent and immaterial and calls for a conclusion of the witness and is speculative.

The COURT.—Objection sustained.

Q. (By Mr. BAYLESS.) Do you know how much these buildings will cost on the wharf?

Mr. GUNNISON.—Object to that on the ground that it is irrelevant, incompetent and immaterial.

The COURT.—Objection sustained.

Mr. BAYLESS.—We offer that map as illustrative of the witness' testimony.

Mr. GUNNISON.—The offer is objected to on the ground that it is incompetent, irrelevant and immaterial, self-serving, and that it doesn't serve any purpose so far as showing irreparable injury is concerned; that it shows more than the contemplated improvements by the plaintiff, and that there is no evidence that it is an accurate map.

The COURT.—That is cross-examination.

Mr. GUNNISON.—A proper subject for objection.

The COURT.—Objection sustained.

Q. (By Mr. BAYLESS.) Mr. Ewing, when you first came here, what property was turned over—what company property was turned over to you?

(Testimony of S. H. Ewing.)

A. All of the Pacific Coast property.

Q. Was this particular property put in your charge?

A. As well as the balance, yes, sir.

Q. It has been under your supervision since?

A. It has.

Q. This particular piece in dispute?

A. In addition to the rest, yes.

Q. Has the company claimed to own this since you have been here? [113—73] A. They have.

Mr. GUNNISON.—We object to that as irrelevant, incompetent and immaterial.

The COURT.—The question has been answered.

Mr. GUNNISON.—We move to strike it. The answer came so quickly, we didn't have an opportunity to object.

The COURT.—Motion sustained.

Mr. BAYLESS.—Your Honor denies our right to introduce this as illustrative of our testimony?

The COURT.—What does it illustrate.

Mr. BAYLESS.—Your Honor allowed him to testify.

The COURT.—I allowed him to testify that it was the plan to build a wharf over this entire piece of property as showing irreparable injury. Now as to what he intends to do, what buildings are going to be erected, and how much those buildings will cost, is immaterial; consequently, that map doesn't illustrate anything.

Mr. BAYLESS.—Your Honor will allow me an exception?

(Testimony of S. H. Ewing.)

The COURT.—Yes, sir.

Cross-examination.

(By Mr. GUNNISON.)

Q. Mr. Ewing, did I understand you to say that this dock must be 600 feet on the face in order to be constructed? A. I didn't say it must be.

Q. Do you mean to say, and do you wish the Court to understand that the company would be irreparably damaged if the dock was 113 feet shorter on its face?

A. They would, yes, sir.

Q. How? [114—74]

A. Because they wouldn't have space enough according to their plans to have two boats land at the same time.

Q. That depends altogether on the length of the boats? A. Yes, sir.

Q. What is the length of the "Spokane"?

A. The "Spokane" is two hundred and ninety odd feet.

Q. What is the length of the "City of Seattle"?

A. About 250 feet.

Q. What is the length—is the "Meteor" a Pacific Coast boat? A. Yes, sir.

Q. What is the length of the "Meteor"?

A. The "Meteor" is about 300 feet.

Q. You say they would be irreparably damaged because they wouldn't be able to lay two boats across the face of the dock at once; is that what you said?

A. I did, yes, sir.

Q. And that, of course, depends upon the length of the vessels? A. Most assuredly.

(Testimony of S. H. Ewing.)

Q. Did you ever see two boats land side by side across the face of the dock? A. Yes, sir.

Q. So that it would be possible to moor two boats at the dock even if it wasn't long enough to take the whole of the two boats across the face?

A. She couldn't work the cargo of the outer one when laying like that.

Q. You have seen them unload, haven't you, that way?

A. A few boxes, but not 200 tons of cargo.

Q. How many times a year does the Pacific Coast Company have two boats here at the same time.

A. Some years they have more and some less.
[115—75]

Q. When was the last time there have been two boats of the Pacific Coast Co. here at once?

A. About twelve days ago.

Q. When was the last time before that?

A. About a week before that.

Q. And before that?

A. Do you mean exclusively Pacific Coast steamers or other vessels at that dock?

Q. I am talking about the Pacific Coast—this is the Pacific Coast Co. dock you are speaking about?

A. Yes, sir. It is a public dock for any steamers—not exclusively Pacific Coast steamers.

Q. I asked you how long before that?

A. I don't exactly recall before that, but it happens every once in a while.

Q. Occasionally?

A. Not exclusively Pacific Coast Co., but other

(Testimony of S. H. Ewing.)

steamers are wharfed there.

Q. There is another wharf in town?

A. There is one other public wharf, yes.

Q. If that wharf should be constructed, it wouldn't be the only wharf in town? A. No, sir.

Q. That is, if the wharves now in existence would remain public wharves?

A. No, it wouldn't be.

Q. The Pacific Coast Co. charges wharfage for boats landing at their dock?

A. No, sir; they charge dockage.

Q. I mean dockage, yes, sir. You mean that the Pacific Coast Co. would be irreparably damaged if they had to hold another [116—76] boat of another line here?

A. As far as that wharf business is concerned, yes, sir.

Q. You also mean to say that a dock 113 feet short of the 600 feet, that would be 487 feet; you don't mean to say they couldn't lay two boats alongside that wharf even if they were each 300 feet long, do you? A. I don't quite get you on that.

Q. I say if the wharf were built at 487 feet instead of 600, you don't mean to say that they couldn't lay two vessels along the face of that dock even if one or both of them were 300 feet in length?

A. They could lay them there, but if they had freight in both ends they would be delayed.

Q. If a vessel was 300 feet long, it would only take up 300 feet of dock?

A. That is one vessel, yes, sir.

(Testimony of S. H. Ewing.)

Q. The next one would take up how much?

A. What if she had freight in one hatch and also in the other hatch; what if the 300-foot steamer had more freight than the other and was laying—

Mr. BAYLESS.—We object to this as argumentative.

The COURT.—Yes, I think so. I don't see the relevancy—I don't see what you are driving at.

Mr. GUNNISON.—I am driving at this, your Honor. Mr. Ewing has said that the Pacific Coast Co. would be damaged irreparably because they couldn't put two vessels along the face of that wharf at the same time and I assume that is the only irreparable damage which the Pacific Coast Co would suffer. Now, I think it would be competent and it was my purpose to show by this cross-examination that you could [117—77] lay two vessels along the face of the wharf.

The COURT.—If the Pacific Coast Co. is entitled to this property and want to build a wharf 600 feet in length, what difference does it make whether the company uses it for one or two vessels?

Mr. GUNNISON.—I guess that is right.

Redirect Examination.

(By Mr. BAYLESS.)

Q. Did the company consider building a wharf with a front of any less than 600 feet?

Mr. GUNNISON.—Object to that as irrelevant, incompetent and immaterial.

The COURT.—You have already brought out of this witness that they intended to build a wharf 600

(Testimony of S. H. Ewing.)

feet long. Now, you are asking him about building a wharf less than 600 feet.

Mr. GUNNISON.—May I ask another question?

The COURT.—Just a moment—Have you any other questions?

Mr. BAYLESS.—No, sir.

The COURT.—Very well, what is the question?

Recross-examination.

Q. (By Mr. GUNNISON.) If the defendant in this case should be successful ultimately in his contention that he is the owner of this property, would the Pacific Coast Co. not build a wharf there?
[118—78]

The COURT.—Just a minute. That is the question— Now, do you object to that question? If you do, please state your objection, Do you object to the question?

Mr. BAYLESS.—I do.

The COURT.—On what ground?

Mr. BAYLESS.—For the reason that it is irrelevant, incompetent and immaterial.

The COURT.—The objection is sustained on the ground that it is not proper cross-examination.

Mr. GUNNISON.—Exception.

Q. (By Mr. GUNNISON.) Is that the only irreparable damage the Pacific Coast Co. would suffer?

A. What was that?

Q. That they couldn't lay two vessels along the face of the dock?

A. Well, it would interfere with the wharfage business.

(Testimony of S. H. Ewing.)

Mr. GUNNISON.—That is all.

(Witness excused.)

Mr. BAYLESS.—That is our case in chief.

The COURT.—Proceed with the defendant's case.

Mr. GUNNISON.—There were some deeds offered this morning, I believe, exhibits 1 to 18, inclusive. We move to strike exhibits 1 to 18, which were deeds and other instruments, location notices, etc., which were offered under the statement of counsel that he would connect them with the case and with the plaintiff's contention or ownership. They were admitted as I understand—I am uncertain at this time on account of my not having been present in court, having been on the steamer—and if I seem to be a little bit foggy, I hope your Honor will pardon me—but I understand these instruments and deeds were offered subject to a motion to strike in the [119—79] event the plaintiff failed to connect them with the case in such a way as to make them relevant, and since I have arrived—since I have been in the courtroom, there has been no offer with reference to any deeds and no proof as to the ownership of any property, and my partner states to me that as he understands the evidence, there is no evidence connecting these deeds, these instruments, and we move to strike them; that they are incompetent, irrelevant and immaterial.

The COURT.—The motion is denied as to every exhibit except exhibit four, which contains the records of the Harris Mining District. As to that exhibit, I would like to hear from counsel for the plain-

tiff as to how he has connected it up. Exhibit 4 was the minutes of the Harris Mining District, pages 15 to 22 inclusive.

Mr. BAYLESS.—If the Court please, I merely offered that in evidence to show that at a meeting of the miners and citizens, that on that date the name of the town was officially changed from Rockwell, or Harrisburg, to Juneau, for the purpose of keeping our records clear. First, in 1881, the town was known as Rockwell, then it was known as Harrisburg, and at this meeting of the miners on December 12, 1881, a vote was taken and the name of the town changed to Juneau, and it has been known as that ever since.

The COURT.—Suppose it hadn't been changed to Juneau, what has that got to do with this case?

Mr. BAYLESS.—I simply wanted to keep our records clear. I don't want to hold out on it; if your Honor doesn't think it is material, why it may be stricken.

The COURT.—Exhibit four will be stricken.

Mr. BAYLESS.—I would like to have the right to examine this exhibit more closely and present it in the morning, if I may. [120—80]

The COURT.—If you can show that it is connected with the case, it will be admitted.

Mr. GUNNISON.—If your Honor please, I desire to make a motion for a nonsuit and I would ask your permission to make that in the morning.

The COURT.—I am going to have a night session.

Mr. GUNNISON.—To-night?

The COURT.—Yes, sir.

Mr. GUNNISON.—Well, your Honor, of course I realize that this case was set for the 17th of July—at the time there was another term of court in session, and I then stated to your Honor that I desired to go to Seattle. I was unable to go to Seattle because of the long extent of that term of court and I returned here and your Honor told me at that time that it was set and that if I was not back—that if I would come back as quickly as I could—your Honor would continue the case until the 20th. I was called to Ketchikan on an important business engagement and was unable to make the Seattle trip and I have only just returned. Your Honor must realize that I haven't had any chance to talk with the witnesses. It is true my partner has been here, but this is a case I have had charge of since the inception of the case and I request your Honor to give me till to-morrow morning.

The COURT.—I stated to you, Judge Gunnison, in Skagway, that if you did not get back from Seattle—I understood you were going to Seattle, and I told you if you did not get back by the 17th, I would not force the trial of this case until the 20th. Now, I have two other cases set for the 20th and I don't want one case to run into another if it can possibly be prevented. [121—81]

Mr. GUNNISON.—I am not asking it to go over to the 20th, but to-morrow morning.

The COURT.—I know, but to-morrow morning—we lose all this time. To-morrow is Saturday and

Saturday is a half-holiday, and Monday is the 20th.

Mr. BAYLESS.—If the Court please, may I say a word?

The COURT.—Well, it is not necessary, because I am not going to have a night session.

Mr. BAYLESS.—Will your Honor work to-morrow afternoon?

Mr. GUNNISON.—I am perfectly willing.

The COURT.—Of course, it is a half-holiday and we received instructions from the Department regarding it, but I suppose anything can be done by consent if the Deputy Clerk is willing to work.

Mr. REED (Deputy Clerk).—Yes, sir, I am willing.

The COURT.—All right.

Mr. BAYLESS.—Would it be possible to run to six o'clock to-night?

Mr. GUNNISON.—We are not ready.

The COURT.—Do you want an adjournment?

Mr. GUNNISON.—Of course, I didn't ask for a night session.

The COURT.—Well, we will call it half past nine o'clock to-morrow morning. Try to finish this to-morrow.

Mr. GUNNISON.—I am afraid we won't be able to finish to-morrow.

The COURT.—Very well; we will do the best we can. There may be a night session to-morrow night.

(Whereupon court adjourned until 9:30 A. M., July 18, 1914, when court reconvened pursuant to adjournment.) [122—82]

Mr. BAYLESS.—If the Court please, I have filed my reply this morning and served a copy on Judge Gunnison.

Mr. GUNNISON.—I have had—the reply was served on me last evening about half-past five. Our stenographer had gone and I was not able to get to it until this morning and we have prepared a motion to strike the reply and have a demurrer here to the reply itself.

The COURT.—Well, I don't see anything in the reply, Judge Gunnison, except a denial of each and every allegation, contained in the fifth paragraph, and the rest of the reply are admissions.

Mr. BAYLESS.—And denials, if the Court please.

Mr. GUNNISON.—I call your Honor's attention to the prayer and that there is no allegation of ownership in the reply.

The COURT.—There doesn't have to be, that I know of.

Mr. GUNNISON.—The reply is an answer to an affirmative defense.

The COURT.—That is very true, but he alleges in the complaint that it is the owner; now, he doesn't have to re-allege it in the reply.

Mr. GUNNISON.—I assumed that a reply to an affirmative defense had to be a complete answer. It admits that it has cut off its right to the upland and now relies solely—the reply relies solely upon the possession of the tide lands and not on any right of ingress or of egress and your Honor, I think, will bear in mind that the right of ingress and egress isn't

right to build on the tide land, but is right to pass to and fro over it, and there isn't any allegation here or in this reply that we have interrupted his right to pass to and fro over it. He now says that it is true—he has [123—83] admitted that they sold the upland and that they have sold off a street from the westerly end of it, and the only thing he denies is the allegation in the answer that he has cut off his littoral and riparian rights so far as this is concerned.

The COURT.—If the plaintiff in his reply simply admits some of the allegations of an affirmative defense—if he moves out of court, you should make a motion for judgment. So far as the prayer of the answer is concerned, of course he cannot get any relief that is not consistent with the relief asked for in his complaint. The motion to strike will be overruled.

Mr. GUNNISON.—Well, the demurrer is based on that.

The COURT.—Well, the demurrer will be overruled.

Mr. GUNNISON.—We would like to file a motion during the day for judgment on the pleadings. I didn't have time to do it this morning. Now, before making our motion for nonsuit, we desire to make a formal motion with reference to the deposition of Captain Lloyd. We move to strike the answer to direct interrogatory 13 on the ground that that interrogatory and the allegations with reference to the necessity for taking out head and stern lines ashore and making fast to the piles is based upon the theory

in the deposition of Captain Lloyd that that wharf was—the wharf about which he is talking extends 250 feet from the shore line into deep water. We move to strike from the answer to direct interrogatory 14 the portion down to the words “1896” in line 281½, on the same grounds and to strike the next sentence “And they were so used by other ships for the same purpose,” on the ground that no foundation was laid for any such testimony; and the balance of that answer we move to strike on the grounds stated in our first motion, that it is based on the hypothesis—or on a statement [124—84] of facts that isn’t shown in this case. There is no evidence except the statement of Captain Lloyd that that wharf was 250 feet; in fact, all of the evidence is to the contrary—that it was only 80 feet long. And we also move to strike the answer to interrogatory 22 on the same grounds, based on the hypothesis that that wharf was 250 feet long.

The COURT.—The motion will be denied.

Mr. GUNNISON.—Exception. Now, if your Honor please, we move that this action be dismissed and the plaintiff in this case be nonsuited, on the ground, first, that they have failed to prove their allegations as to the incorporation of the company and, consequently, its right to sue as a company; second, they have failed to prove, as required by Chapter 11 of the Acts of the Legislature of the Territory of Alaska, that they have paid their annual tax for the present year—the last annual corporation tax; third, that they have failed to prove the location—a location of the ground which covers the ground in contro-

versy; fourth, that they have failed to prove that they were in possession of this ground in controversy on the 17th day of May, 1882—

Mr. ROBERTSON.—1884.

Mr. GUNNISON.—1884, or at any other time, or that they used or occupied it, or that they claimed this ground in question. They have failed to prove possession of the ground and they have failed to prove occupancy of the ground either before 1884 or since that time. They have failed to prove their allegation that the ground in controversy was improved, and they have failed to prove that we have interfered—that the defendant in the case has interfered with the access of this company, or this plaintiff, to deep water from its upland. Your Honor—well, I will not discuss it until I get to it— [125—85] their allegations being that they were in possession of blocks O, P, Q, R, S and T, and the proof being that they were in possession of the waterfront, of tide lands, extending northerly or northwesterly from the land in question for more than 450 feet. They have failed to prove any irreparable damage or that the acts of the defendant, or the possession of the defendant, of the ground by this defendant James will render the land valueless—render the waterfront or the upland of the plaintiff company valueless. The plaintiff has admitted that it has cut itself off in the pleadings; it has admitted that it has cut itself off from the upland, and that it has no littoral rights; and that there not only is no proof of ownership of the upland, but that it is admitted that they have disposed of the title to the upland.

Mr. BAYLESS.—Where is that admission, Judge Gunnison?

Mr. GUNNISON.—In your reply, sir. And that they have also admitted that they have dedicated the streets along the waterfront to the city and that the streets have been accepted by the city. Now, if your Honor please, I realize that the first two grounds on which our motion for a nonsuit is made are highly technical and are susceptible to proof and they have been omitted through oversight of counsel, but when we come to the actual proof on these various subjects, I think your Honor will see that our contention is well founded. In the first place, the evidence in this case as it stands at the present time is that some time in 1881, according to the description in a location notice, the plaintiff's predecessors in interest located a claim for a wharf site. They located 600 feet, placed a center stake, and measured 300 feet each way from it. In the complaint, they allege that their marks [126—86] began at a stake and mound of stones an eighth of a mile easterly from the town, ran north 600 feet, thence east 600 feet, and then ran to a stake or stone at low-water mark, and then ran along the water line to the place of beginning; that the land located by Murray was improved, and that Murray entered into possession of it and had been in the actual, notorious, continuous and adverse possession, under color and claim of title for more than seven years. Now, the evidence here shows,—in the first place, there is no evidence here to show any markings on the ground before 1884. The wharfinger, Mr. Webster, testifies that in 1887

he put in the two piles on each end. The witness Mr. Wells testified that there were some piles out there somewheres that they tied a ship to. The testimony of the two captains was that the ships were tied up in bad weather—moored in bad weather by head and stern lines ashore. Captain Hunter, if I remember correctly, didn't testify that they were tied up to piles. My recollection of his testimony was that the lines were taken ashore and fastened above high tide. The testimony of Captain Lloyd is that they were taken ashore and fastened on piles, but the question as to the marking and the occupancy of that land has only that testimony to bear on. There is also the testimony of Captain Hunter that sometimes when they had a load of cattle they would open the ports, let the cattle out and they would swim ashore. Now, we contend that that is not evidence of either possession or occupancy of the land. The testimony of the wharfinger Webster is, that so long as he was there, he never remembers of the lines of the vessels being moored in that way, and even Mr. Wells, with all his decision and his certainty of testimony, doesn't [127—87] say that that was done every time. He doesn't say it was the practice. He said that in bad weather they sometimes moored that way. And there is no evidence here in this case that in May, 1884,—on the 17th of May, or within any appreciable time prior to that, that the land in controversy was either in the possession, or in the occupancy, or occupied by the predecessors in interest of this plaintiff, and I submit, your Honor, that if the plaintiff in this action is relying upon the Act of

1884, it is incumbent upon them to bring themselves within the terms of that Act. The language of the Code, as I recollect it, is that persons in the actual possession and occupancy of the ground, or claiming the ground, shall not be disturbed in their possession until future legislation. Now, let us see—what evidence shows with reference to the occupancy or claim of ownership of that ground prior to 1884? I believe there is in evidence here a location notice in the language of the complaint. Now, aside from that, there is no evidence of any claim of ownership—no open or adverse ownership at that time. Mr. Webster says there was no occupation in that they never used that ground, weren't in the occupancy of it, and there isn't any evidence of possession of it, and that in 1887 he put in the two piles to mark the corners. Now, we submit that under this statute, in order that that might be efficacious—that any marking might be efficacious—it must have been on the 17th day of May—

The COURT.—Now, Judge Gunnison, suppose those piles were not put in until 1887—there were seven years from 1887 to 1894. Your man didn't go there until 1906. Now, where is the question as to whether that is sufficient?

Mr. GUNNISON.—We claim 1900. [128—88]

The COURT.—It was seven years from 1887. Now, where is the question of the sufficiency of their testimony, that is, the weight of it—how can you contend that there is no testimony? Of course, I have got to take all the testimony and weigh it and see it the same as a jury, but how can you contend that

there is no testimony of any occupancy?

Mr. GUNNISON.—I contend that there is no testimony of any occupation of that ground—I am unable to point out any testimony of occupation of that ground. That is the testimony and we contend that it doesn't constitute—

The COURT.—On that question, the time to argue that is when the time comes to argue on the merits. It is testimony tending to show whether it does or not—I cannot dismiss the case now—but when it comes to sizing up the testimony and weighing it, it may be another question.

Mr. GUNNISON.—Well, your Honor, here is a case where it is a question whether that is occupancy or not. They have rested. Now, if that isn't occupancy,—why must we be put to trial if it isn't occupancy? It seems to me the time to say about the occupancy is now. Further than that, the evidence conclusively shows that after 1884, perhaps 1885, the land in question here was absolutely abandoned, that it was never used for any purpose whatever. There isn't any evidence here of any use of that land after 1886. That is the very latest—

The COURT.—1886?

Mr. GUNNISON.—1896, I mean, your Honor. The last time that was used—and I call your attention to the fact that that was a wharf site—and that as a wharf site—the whole 600 feet as a wharf site was never used after 1896. This was taken up as a site for a wharf, and hasn't been used [129—89] as a wharf since that time. There isn't any evidence of any possession of it as a wharf site since

then. There isn't any evidence of the use of this particular piece of ground, even taking their testimony at the very strongest that it could be taken, that after 1894 the ground in controversy was ever used for any purpose whatever. There isn't a scintilla of evidence of its use, even for the purpose of carrying lines across it and mooring a ship, or for the purpose of discharging cattle over this ground, even taking Captain Hunter's statement at the strongest possible construction of it. Now, your Honor held, if I remember correctly, in the case of Clark vs. Sheldon that tide lands could be abandoned, and it seems to me that there isn't any evidence here of any sovereignty or exercise of dominion over this ground in any respect. Further than that, there isn't any evidence of any attempt to exercise the right of ingress or egress to deep water over that ground in controversy. The testimony of the witnesses is that these piles were set at high water—the mark of high water—that they went to the piles in a boat. Even taking the testimony of Captain Hunter and Captain Lloyd that the lines were taken ashore in a boat, and I think even Mr. Wells testified too that they were taken to the piles in a boat at high water—now that isn't ingress or egress.

The COURT.—I understand that position has been abandoned by the plaintiff in his reply.

Mr. GUNNISON.—Well, if your Honor holds that, of course that disposes—

The COURT.—That is my understanding of it from reading the reply.

Mr. BAYLESS.—Which position? [130—90]

The COURT.—Egress and ingress from the upland.

Mr. BAYLESS.—No, your Honor, we have not.

The COURT.—Very well, proceed with the argument.

Mr. BAYLESS.—If your Honor will call my attention to the place, I will change it.

The COURT.—I will give you every opportunity that anybody could have.

Mr. GUNNISON.—Now, returning to the question of ingress and egress, there is no evidence here of the present ownership of the upland behind this tract. On the contrary, there are admissions—that is, I mean there is no direct evidence that the Pacific Coast Co. owns the upland behind these blocks—Block T. and 13 feet of Block S. On the contrary, the plaintiff admits in its reply the sales of tracts of land; it also admits the sales to the city on the west-erly end of R, S and T, which are the ends of the lots which abut upon the tide lands. There is no evidence of any attempt to use this piece of ground in controversy and we shouldn't confuse this piece of ground with the balance of it. There is no evidence of any attempt on the part of the plaintiff or its grantors ever to use these 113 feet for the purpose of access to the upland or from the upland to the water, not a scintilla of evidence. On the contrary, if your Honor will take that map that was introduced yesterday showing the "Topeka," I think, or take the testimony of any witness as to the length of one of those vessels extending over the face of the wharf, this

old Carroll and Murray wharf, it will be obvious that even these vessels when they were working the forward or after hatch—and I think Captain Lloyd said they always made a port landing so that the vessel would stand farther to the south—[131—91] and an examination of that plat will show that the bow of the vessel never extended over the face nor across the front of this land in controversy, and it is reasonable to suppose that even when Captain Hunter—when cattle were discharged from the vessel, as Captain Hunter states, that those cattle sought the shore by the quickest place, and it is a matter of common knowledge that the forward ports of a vessel are some distance aft of the bow, and the cattle, when dropped off there, wouldn't have gone across this land. So the question of use of this land for the purpose of access to the upland from the sea isn't covered—there isn't a scintilla of evidence.

The COURT.—Now, Judge Gunnison, so far as the question of ingress and egress is concerned, I would rather hear from the other side.

Mr. GUNNISON.—There is one other thing I would like to speak of. There is no evidence—I think the evidence already spoken of—of any attempt to improve this particular ground in controversy. There is no evidence here of irreparable damage to the plaintiff. Now, it is true that Mr. Ewing yesterday testified that the company would be irreparably damaged because it couldn't lay two vessels at the face of the wharf, but we submit that that is not irreparable damage and we think that there is no evidence of irreparable damage here.

Mr. BAYLESS.—If the Court please, it was an oversight on my part in not offering in evidence a certified copy of the articles of incorporation of the Pacific Coast Co. I overlooked that denial in the answer and I would ask the privilege of being allowed to introduce a certified copy and also [132—92] of proving that the company has paid its corporation tax for the year 1913.

The COURT.—Do you allege that in the complaint?

Mr. BAYLESS.—No, we just said that the Pacific Coast Co. is a corporation, duly organized and existing. We didn't allege it at all, but they didn't move against that, as I remember—they just denied it in the answer.

Mr. GUNNISON.—Our position is that the statute requires that they must prove that; that they may neither commence or maintain an action unless they allege that and prove it.

Mr. BAYLESS.—I believe it has been held—I think your Honor sustained a demurrer to a complaint that did not allege that.

Mr. GUNNISON.—Our contention is that it may not be maintained now without proving it.

The COURT.—This action was commenced when?

Mr. BAYLESS.—This action was commenced prior to the passage of that Act.

The COURT.—I will allow the plaintiff to reopen his case for the purpose of proving the incorporation of the company and for the purpose of proving that they paid their tax.

Mr. BAYLESS.—I would offer in evidence a cer-

tified copy of the articles of incorporation of the Pacific Coast Co.—certified to in 1898.

(Admitted in evidence and marked: “Plaintiff’s Ex. #21.”)

Mr. GUNNISON.—Of course we except to the re-opening of the case.

The COURT.—Now, Mr. Bayless, I don’t want to mix things up. I thought that was the only thing you were going to offer. I will give you leave to re-open your case to that extent. Now, go ahead and make your address in regard to the motion. We can attend to this later on. [133—93]

Mr. BAYLESS.—It is considered that I have the privilege of proving that the company paid the 1913 tax. If the Court please, taking up the matters of admission, I believe it is your Honor’s ruling that we have admitted ourselves out of court.

The COURT.—I did not say you had admitted yourselves out of court. It was my understanding that you had abandoned that situation.

Mr. BAYLESS.—I call your attention to the paragraph which refers to it—Paragraph 5 of the defendant’s affirmative answer is as follows:

“Upon information and belief, that prior to the commencement of this action, this plaintiff attempted to and did part with, and did sell and convey to other persons, not parties to this action any and all right, title and interest in the tide lands and other lands described in said complaint and herein described, of which said plaintiff, in said complaint, alleges itself to be the owner, and that plaintiff is not now and was not

at the time of the commencement of this action, the real party in interest, it having theretofore parted with and divested itself of whatever right or claim of right to, or interest in, the said property it may, at any time, have pretended or claimed to have had therein.”

The reply, paragraph 3, is as follows:

“Referring to paragraph V of said affirmative defense set out in said answer, plaintiff denies each and every allegation therein contained.”

I should think that that answers Judge Gunnison’s statement that we did not claim the uplands. Now, with reference to the allegation that we had divested ourselves from all the littoral rights, paragraph 4 of the answer is as follows: [134—94]

“That prior to the commencement of this action, plaintiff, by various certain formal conveyances, deeded to the town of Juneau, and dedicated to said town and the public as a public street, road, or highway, a strip off the westerly portion of Blocks R, S and T, abutting upon the line of mesne high tide and further, dedicated other portions of said lots and blocks as public streets, roads and alleys; that said conveyances and dedications have been accepted by said town; that by said acts, the said plaintiff cut off, abandoned and parted with, and divested itself of any and all littoral and riparian rights, if any it ever had, and any right or privilege of access to or from deep water from the said upland across the tide lands herein described, and

thereby estopped itself from claiming any such right, title or interest in or to or right of access across, said herein described tide lands.”

Paragraph 2 of the reply is as follows:

“Referring to paragraph IV of said affirmative defense set out in said answer, the plaintiff admits that it deeded to the City of Juneau a certain strip of ground from the westerly portion of Blocks R, S and T, and further admits that it conveyed certain portions of said lots and blocks as public streets, roads and alleys; that said dedications have been accepted by the town, but denies each and every other allegation of fact contained in said paragraph.”

I believe it is a matter of law whether or not in making such dedication it has cut off its riparian rights, and the decision in the McCloskey case is of some weight. I didn't intend to say that we had cut off any littoral or riparian rights. As a matter of fact, we have dedicated a piece of land to the [135—95] city for a street, but the deeds merely grant the city an easement as a public street. It wasn't a deed to the absolute fee, because the deeds contain a reversionary clause to the effect that if the city should discontinue the use of it as a street, then it would revert to the company.

The COURT.—What evidence have you offered that this cuts off your access?

Mr. BAYLESS.—I haven't offered any evidence, if the Court please, that this has cut off our access.

The COURT.—Then how do you maintain this action on that ground?

Mr. BAYLESS.—I don't quite understand.

The COURT.—What evidence have you offered that the structure of Mr. James' cuts off your access—ingress and egress to the upland?

Mr. BAYLESS.—I haven't offered any evidence as to that fact, if the Court please.

The COURT.—How can you make it then the basis of a recovery?

Mr. BAYLESS.—Well, I beg your Honor's pardon—Mr. Ewing testified that the gridiron was in the way of their building any wharf and that certainly prevented the company from using the tide lands, inferentially of its right of ingress and egress to the uplands. Mr. Wells said that if they should land steamers down there where the old Carroll wharf was, by means of a head line to the pile where it used to be, that this gridiron would interfere with it.

The COURT.—You are not landing vessels down there in any way such as that.

Mr. BAYLESS.—I understand that, but those two witnesses have testified that the occupation by Mr. James certainly [136—96] interferes with the actual ingress and egress and that is a matter which your Honor should infer anyhow from the position of the defendant himself. The mere fact that he is down there certainly prevents the ingress or egress by the plaintiff, and I will say this, that the main part of my case is in rebuttal, and I only put on the witnesses who testified as to the company's occupation and possession in the early days, prior to the Act of 1884 and during the time the wharf was used.

Then it is up to James to prove that we abandoned the ground that he has been in possession of as he pleads in his affirmative defense from 1900 down to date. After he presents proof to that, we must disprove that. That is the reason I didn't put Mr. Swan on or interrogate Mr. Ewing further. The testimony shows, by Mr. Wells, that the land was appropriated in 1881 by Murray; that a wharf was built in 1881 and completed in 1882, and that between 1882 and May 17, 1884, that these piles stood on the corners of the property and that a pile in particular stood where the gridiron is now, and that the company was in possession, as Mr. Wells said, by reason of using this pile for the mooring of ocean-going vessels which landed at the Carroll wharf at all times from the date the wharf was completed and the piles put in—I think in the summer of 1883—from that time to the passage of the Act of May 17, 1884, and he also said that situation continued down as long as they used the wharf. I call your attention to Mr. Webster's testimony; you will particularly remember that he said he had no knowledge of the situation on the ground prior to 1885, at least the latter part of 1884 or 1885; that he had no knowledge of the conditions prior to the Act of 1884. He has not contradicted Mr. Wells in that [137—97] respect. It is true he testifies that piles were set there on the corners in 1887 and that, as far as he knew, no vessels were tied up to these piles at all, but as I recollect his testimony, it was *not* the effect that no vessels ever tied there.

The COURT.—I think the motion should be de-

(Testimony of S. H. Ewing.)

nied, for the simple reason that the whole matter can be passed upon when the Court decides the case. If counsel for the defendant thinks there isn't any evidence, let him refuse to put in any evidence. If he thinks there is nothing to answer, why don't answer anything.

Mr. GUNNISON.—Will you give us ten minutes, please, to talk the matter over?

(Whereupon court took a recess for 10 minutes.)

The COURT.—Before you decide what to do, I promised Mr. Bayless to allow him to prove those particular things, that is, the incorporation of the company and the payment of the license tax. You may proceed.

S. H. EWING, being recalled on behalf of the plaintiff, by permission of the Court, testified as follows:

Direct Examination.

(By Mr. BAYLESS.)

Q. Mr. Ewing, I will ask you if the Pacific Coast Company has paid its Territorial License Tax for the year 1913? A. It has.

Mr. GUNNISON.—We object to that as incompetent, irrelevant, and immaterial, not the best proof. The statute provides that the records shall be produced [138—98]

The COURT.—Objection overruled.

Q. (By Mr. BAYLESS.) When did it pay it?

A. Second of January of the present year.

Mr. BAYLESS.—That is all.

(Witness excused.)

The COURT.—The articles of incorporation

weren't introduced, were they?

Mr. BAYLESS.—They were introduced, as I recall.

Mr. GUNNISON.—If it please your Honor, the defendant is in this situation: We have an affirmative defense, and in that affirmative defense we ask for injunctive relief against the plaintiff, and while we don't recede from our position that there is no evidence of their ownership or our position that they have failed to prove their case, we desire to proceed with our affirmative allegations for the purpose of obtaining a permanent injunction against them.

The COURT.—Proceed.

Mr. BAYLESS.—Just a minute, if the Court please. Mr. Swan is a witness for the plaintiff in rebuttal. Mr. Swan has business engagements in Seattle that will necessitate his leaving to-night on the "Alameda" and I had been in hopes that the defendant would get its case in in time for Mr. Swan to give his testimony before that time. I would ask permission to put him on the stand later in the day—to have Mr. Swan's testimony taken in an irregular way.

The COURT.—If Mr. Swan is a witness in rebuttal, of course you can't tell what you want to rebut until you [139—99] hear the testimony of the defendant; consequently, I cannot look ahead and say just what time you may put Mr. Swan on the stand, because you do not know yourself. You don't know what you want to rebut.

Mr. BAYLESS.—It is a hard position for us to be in. What I ask is that sometime later in the day,

if the defendant cannot get its case in, that Mr. Swan's testimony be taken in the same manner as a deposition in open court.

The COURT.—Well, we will get at that when the times arrives. When you see you want Mr. Swan as a witness, then is the time to ask the Court to put him on out of order, but I cannot pass on that before that time.

Mr. GUNNISON.—If they want to do it now, they may.

The COURT.—He can't do it now, because there is nothing to rebut. [140—100]

[Testimony of Charles Biernoth, for Defendant.]

CHARLES BIERNOTH, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. GUNNISON.)

Q. Will you state your name, please, Mr. Biernoth?? A. Charles Biernoth.

Q. How old are you? A. Fifty-four years.

Q. What is your occupation? A. Miner.

Q. Where do you live?

A. I live on Fourth Street here in Juneau.

Q. How long have you lived in Juneau?

A. Since 1899.

Q. Do you know George E. James? A. I do.

Q. When did you first know George E. James?

A. In 1892, in the State of Washington.

Q. Do you know him in Juneau?

A. Yes, sir; ever since I am here.

Q. Do you know the place on the waterfront here

(Testimony of Charles Biernoth.)

where the James gridiron is? A. I do.

Q. When was the first time you saw that, Mr. Biernoth—that place, not the gridiron?

A. That place? It was in 1900.

Q. Now, what were you doing in 1900 when you first saw that?

A. I had been working for James in the sawmill at Sheep Creek. [141—101]

Q. Mr. James had a sawmill at Sheep Creek?

A. Yes.

Q. And you were employed by him? A. Yes.

Q. What did you do with reference to this ground in controversy in 1900, this piece of ground?

A. We put in some rafts of lumber from Sheep Creek.

Q. When was the first time you came there, what time in the year?

A. I should say it was in September or October, something like that.

Q. 1900? A. In the fall of the year.

Q. I mean this ground when you came up with the rafts—what year? A. The fall of 1900.

Q. What was the condition of that beach there when you arrived?

A. It was a beach—lots of boulders there.

Q. And was it then in the possession of any one?

Mr. GUNNISON.—Object to that as calling for a conclusion.

The COURT.—Objection sustained.

Q. (By Mr. GUNNISON.) Was anyone on that beach when you were there? A. No.

(Testimony of Charles Biernoth.)

Q. Were there any buildings on it? A. No.

Q. Do you know where the old Murray and Carroll wharf was? A. I do.

Q. Was that used as a wharf at that time?

A. No.

Q. Where were vessels landing here in Juneau?

A. Over here on the Pacific Coast and Alaska Steamship Companies' wharves at that time.

[142—102]

Q. That was not used as a public wharf in 1900?

A. No.

Mr. BAYLESS.—Object to that as calling for a conclusion.

The COURT.—If he knows, he may answer.

Q. (By Mr. GUNNISON.) You say there was no structure on the tide lands when you arrived?

A. There wasn't.

Q. And that it was covered with boulders?

Mr. BAYLESS.—Object to that as leading.

Mr. GUNNISON.—Well, I think he has already testified to that. I do not want to attempt to lead him.

Q. Now, what did you do, if anything, with reference to that piece of tide land?

A. Oh, we had to clear some of them rocks off.

The COURT.—Just a moment. What do you mean by "this piece of tide land?"

Mr. GUNNISON.—I mean this piece in controversy.

The COURT.—That is, where Mr. James had his gridiron?

(Testimony of Charles Biernoth.)

Mr. GUNNISON.—Yes, sir.

A. (By the WITNESS.) I couldn't exactly state that it was exactly that piece of ground where that gridiron was.

Q. (By Mr. GUNNISON.) Describe where it was.

A. It was between that wharf and Chief Johnson's house.

Q. Where does Chief Johnson's house stand with reference to the present Young dock?

A. Almost on the other side.

Q. Almost behind it on the upland? A. Yes.

Q. And it was between the Murray and Carroll wharf and the Chief Johnson house?

A. It was. [143—103]

Q. What did you do with that piece of beach between that ground and the Chief Johnson house?

Mr. BAYLESS.—Object to that question as too indefinite and that it has nothing to do with the property in this case.

The COURT.—I think it ought to be confined to what is in dispute.

Mr. BAYLESS.—As I recollect, he hasn't testified that he knows about the property in dispute.

Mr. GUNNISON.—He has testified that he knows where the gridiron is.

Q. Do you know where the James' gridiron is, Mr. Biernoth?

A. Yes, I know where it is at present.

Q. Now, where is that with reference to the Young Dock, the Chief Johnson house, and the old structure

(Testimony of Charles Biernoth.)

known as the Carroll and Murray wharf?

A. About between it. I should say it corners nearer the Young Dock than anywhere.

Q. Now, do you know how much, approximately how much, ground there is covered by that gridiron and its approaches?

A. Oh, I should think about a hundred feet or so, hundred and fifty.

The COURT.—Just a moment. Do you mean 150 feet up and down the beach?

A. (By the WITNESS.) Oh, it comes from both sides. I mean including the whole thing. There is a kind of a half circle going down to it there at the side.

Q. (By Mr. GUNNISON.) You mean 150 feet along the beach?

A. Yes, along the present street there.

Q. About how much land did you clear—well, I will withdraw that— Are you able to say now where you worked on any part of that hundred feet or 150 feet, that is, occupied by the James float? [144—104]

Mr. BAYLESS.—Object to that as being suggestive and calling for a conclusion, and leading.

The COURT.—I don't think it is suggestive or calling for a conclusion. He asks him if he is able to state— Do you know? What did he do? Did you do anything with reference to that?

Mr. GUNNISON.—I will withdraw the question.

Q. Did you do anything with reference to this piece of ground, or any part of it, which lies within

(Testimony of Charles Biernoth.)

the 100 to 150 feet as you have described it, on the waterfront?

A. Landed those rafts and cleared away the boulders. It wouldn't have floated—

Q. Now, you say that when you brought the rafts in there it was full of boulders; what did you do with the boulders? A. Rolled them in the sea.

Q. About how much ground did you clear in there?

A. Over a hundred feet or more.

Q. Two hundred feet or one hundred feet, which did you say?

A. About a hundred or a hundred and fifty, something like that, more or less.

Q. How did you clear it?

A. Just by taking the boulders off.

Q. When you went on there, did anyone say anything about your going on there?

Mr. BAYLESS.—I object to that as irrelevant, incompetent, and immaterial.

The COURT.—The question is, did anybody say anything to him?

Mr. BAYLESS.—It is too general.

The COURT.—It may be. He may answer it yes or no. [145—105]

Q. (By Mr. GUNNISON.) I mean, did any person other than Mr. James say anything to you about your going on the ground, on the beach, or clearing it or taking any action on there? A. No.

Q. How long did it take you to clear that— Who worked with you, by the way?

A. Mr. James himself, sometimes.

(Testimony of Charles Biernoth.)

Q. How long did it take you to clear it?

A. I couldn't say—worked there several times.

Q. More than a day?

A. Yes, it took more than a day, but we never worked steady. Just when we landed a raft and then rolled the rocks away. Sometimes we came in when the tide wasn't in and cleared away the rocks. We cleared more than really was necessary.

Q. Now, how often did you land rafts there during the year 1900, Mr. Biernoth, for Mr. James?

A. I don't know, about three or four times a week.

Q. How late did you work that summer or that fall?

A. I think it was the 15th of October or so, middle of October anyway, sometime.

Q. Then were you employed by Mr. James all of the following spring? A. Yes.

Q. In the following year. Were you on that ground again in 1901?

A. Sometimes I was, not so much.

Q. In 1901 were there any structures on the ground? A. There wasn't.

Q. Any improvements on it?

Q. Just the same as it was before.

Q. Just the same as in 1900. And what did you do for Mr. James there then?

A. I worked in the lumber-yard over in Douglas.

[146—106]

Q. And did you come to this place with lumber for Mr. James?

Mr. BAYLESS.—Object to that as leading.

(Testimony of Charles Biernoth.)

Mr. GUNNISON.—Yes, I will withdraw the question.

Q. Were you on this ground in controversy, or this place you described as having cleared in 1900, in the year 1901?

Mr. BAYLESS.—I object to that as being a repetition.

Mr. GUNNISON.—That is leading, your Honor, but it is preliminary.

The COURT.—Proceed. He has answered that he was there in 1901.

Q. (By Mr. GUNNISON.) What did you do in 1901? How came you to go there in 1901? What brought you there?

A. I never went there, except with lumber.

Q. Whose lumber? A. Mr. James'.

Q. How many times did you go there in 1901?

A. I don't know.

Q. More than once?

A. I couldn't say; maybe once or more.

Q. Were you there in 1902? A. I think I was.

Q. For what purpose were you there? What did you do there?

A. Well, I never went there except I had a raft, generally from Douglas, brought a raft over there and landed it there.

Q. How long did you work for Mr. James, how many years?

A. From 1899 to 1904; worked a while in 1905.

Q. During that time who, if any one, used that waterfront, if you know—to your knowledge?

(Testimony of Charles Biernoth.)

Mr. BAYLESS.—We object to that as calling for a conclusion of the witness and as being incompetent.

The COURT.—How does that call for a conclusion of [147—107] the witness—“Who, if you know, used it?”

Mr. BAYLESS.—It is leading, if the Court please.

The COURT.—How is it leading—“Who, if you know, used it?” Where is the leading part? Objection overruled.

Mr. BAYLESS.—What year was that?

Q. (By Mr. GUNNISON.) Who, if you know, in the year 1902 used this piece of ground?

A. (By the WITNESS.) Nobody.

Q. Who do you mean— Do you mean to say that Mr. James didn't use it either?

A. He used it always for landing, every year since that time.

Q. Did anybody else except him use it?

A. No, not to my knowledge; no, not that I know of.

Q. During the time you were employed by Mr. James and were on this ground, or landing lumber on it, were you ever warned off or told not to go upon the ground? A. I wasn't.

Q. Did you ever see any man or any person in charge of that ground? A. I have not.

Q. How often were you there in 1903 and 1904?

A. I couldn't say.

Q. Do you remember whether or not you were there during that time?

A. No, I couldn't say. They would come mostly

(Testimony of Charles Biernoth.)

in scows then. I had nothing to do with it at that time.

Q. You just had the rafting to do? A. Yes.

Q. Was anything being done with the wharf in 1902, 1903 and 1904, the old Murray-Carroll wharf, that you know of? A. No. [148—108]

Q. Did vessels land there at that time?

A. Not that I know of.

Q. In 1902, 1903, and 1904. Was the Murray and Carroll wharf used as a landing place for vessels in 1900 and 1901, if you know? A. No, I don't know.

Q. Did you ever see any vessels land there?

A. I did not.

Q. You were residing here at that time?

A. I was.

Mr. GUNNISON.—I think that is all.

Cross-examination.

(By Mr. BAYLESS.)

Q. Mr. Biernoth, where were you living in 1899?

A. At the Circule City Hotel.

Q. Were you working for Mr. James?

A. I was.

Q. When did you start in working for Mr. James?

A. It was, I think, about in July, 1899, or 1900.

Q. And you worked for Mr. James from 1899 until sometime in the year 1904? A. Yes.

Q. Did you live in Juneau during that time or in Douglas?

A. When working for him in Douglas, I lived there, and the rest of the time in Juneau.

Q. How much of the time during those years did

(Testimony of Charles Biernoth.)

you live in Douglas and how much in Juneau?

A. Well, from spring to fall I lived in Douglas and the winter time in Juneau. [149—109]

Q. During the spring and summer you lived in Douglas? A. Yes.

Q. During the winters you lived in Juneau?

A. Yes.

Q. Did you have anything to do with landing any materials on this beach during the winters of these years, 1899 to 1904? A. No.

Q. Do you know anything about the situation on this particular piece of property during the winters of those years? A. I did not.

Q. When you first came there, how much of that beach did you clear on this property?

A. I should say about a hundred or a hundred and fifty feet, something like that.

Q. How many boulders did you clear off that beach? A. I couldn't say.

Q. One or more? A. Several hundred.

Q. How big were those boulders?

A. Some of them took two men to move them.

Q. You cleared the whole hundred or hundred and fifty feet?

A. Yes, we just took the biggest ones out so that the raft wouldn't upset on it.

Q. Did you clear all of the beach from the old Carroll wharf buildings down past Chief Johnson's house? A. I did not.

Q. You didn't? A. No.

Q. Where did you start to clear off the beach with

(Testimony of Charles Biernoth.)

reference to the old wharf building—how far on the other side of the old wharf building? [150—110]

A. Well, it was between there—say about half ways or so.

Q. What was the necessity to clear off—

The COURT.—Just a moment. About half ways between where?

A. The old wharf and the Chief Johnson house.

Q. (By Mr. BAYLESS.) You started to clear there, and you went from that point to Chief Johnson's house?

A. There was a post there where the raft was tied to, and that post may be there to-day.

Q. Did you set that post there? A. I did not.

Q. The post was there when you arrived?

A. Yes.

Q. And was that post on the tide lands just a little this side of Chief Johnson's house? A. Yes.

Q. Down about where the line of Charley Young's wharf piles are now?

A. Well, maybe this side of it.

Q. In that vicinity? A. Yes.

Q. Was that post about five feet from the ground—a pile driven in the ground?

A. About five or six feet above the ground.

Q. And that post was tapered off on the end?

A. Well, it was pretty well used up.

Q. It was an old pile?

A. It might be. Something like eight or ten inches in diameter.

Q. Then you started with that post and came this

(Testimony of Charles Biernoth.)

way, or was that post in the center of the place?

A. Might take it for the center, yes. [151—111]

Q. It was the center. Well, then, you cleared part of the beach where Charley Young's wharf is now, didn't you? A. No, I think that is too far up.

Q. Are you sure about that? Didn't you clear off some of the beach in front of the Chief Johnson house? A. No, I did not.

Q. Well, now, what was the necessity of clearing off a hundred or a hundred and fifty feet?

A. To keep the raft from breaking up?

Q. How big was the raft?

A. Well, sometimes twenty or twenty-five thousand feet of lumber in it.

Q. What did you do with this lumber?

A. Built this flume here for the Last Chance Mining Company; it was also used in the tunnel for blocks, etc.

Q. Did you ever measure the portion of the beach that you cleared of boulders or rocks?

A. I did not.

Q. Do you know whether it is a hundred or a hundred and fifty feet, or how big it is?

A. I just guess at it.

Q. Did you land your rafts there in the same spot each time?

A. Yes; there was only one place to tie up to.

Q. And you tied up to this old pile that was there?

A. Yes, post.

Q. You tied your raft up to this old pile, did you?

A. Yes.

(Testimony of Charles Biernoth.)

Q. And then this raft would swing one way or the other? A. The tide would come in there, yes.

Q. So you cleared the beach on both sides of that? [152—112] A. Yes.

Q. Mr. Biernoth, I hand you a map which is Plaintiff's Exhibit No. 19, and ask you if you can identify the position of the gridiron now claimed by Mr. James on that?

A. Well, that wasn't here at all, that Juneau Iron Works. (Witness indicating.)

Q. Well, does that map show Mr. James' gridiron—I will ask you if this structure looks like a gridiron to you?

A. That must be it. Here was the old wharf.

Q. Now, can you tell where this pile was with reference to this gridiron?

A. I should think about in here some place. (Indicating.)

Q. That is, in front of the line between Blocks S. and T.; that is to say, where the approach to the gridiron is now. A. Yes, a little beyond that.

Q. A little this way? A. No, a little this way.

Mr. GUNNISON.—We suggest that he mark it on the plat.

The COURT.—Yes, mark it.

A. That doesn't show anything but the recent structures. This is supposed to be the Chief Johnson house; here would be about the wharf. Say make it about here some place.

The COURT.—Mark the place where you think the raft tied up. Mark that with an "R."

(Testimony of Charles Biernoth.)

Q. (By Mr. BAYLESS.) Now, your raft you say swung either way, did it? A. Yes.

Q. It swung to the right?

A. Yes, to the right.

Q. And down the channel and toward the left up here. (Indicating.) A. Yes. [153—113]

Q. And how much ground did you occupy on both sides of this pile? Just mark about how much ground you occupied.

A. I should say about fifty or sixty feet.

The COURT.—He couldn't mark that unless he knows the scale.

Mr. BAYLESS.—These marks represent fifty feet.

The COURT.—No, not all of them. Some of them are more and some less.

Mr. GUNNISON.—We object to any such testimony by counsel unless he swears to it.

The COURT.—The witness testifies that it swung about fifty or sixty feet on each side. I don't see how you can hand the witness a map drawn to scale—of which he knows nothing—the correctness of which he knows nothing—and ask him to mark on it where it swung to. He is simply locating approximately where the pile was. Now, he says the raft swung between fifty and sixty feet on each side.

Q. (By Mr. BAYLESS.) Mr. Biernoth, did any fishermen and owners of boats lay their boats up there on that beach from time to time?

A. Not to my knowledge.

Mr. GUNNISON.—We object to that question as

(Testimony of Charles Biernoth.)

irrelevant, incompetent, and immaterial, and too indefinite.

The COURT.—Objection overruled.

Q. (By Mr. BAYLESS.) During the time you say you brought over these rafts, did anybody else use that beach? A. Not to my knowledge.

Q. No fish boats ever landed there?

A. No; there wasn't very many boats here at that time anyway.

Q. You say you landed rafts three or four times when, in 1900?

A. The fall of 1900, yes. [154—114]

Q. And you worked from—you started rafting there in September or October, didn't you, in 1900?

A. About September, I should think.

Q. And you quit there on or about the 15th of October, 1900? A. Something like that.

Q. How many times did you bring over rafts in 1900? A. I couldn't say.

Q. Three or four times, or once or twice?

A. Oh, about several dozen or more. Three or four a week.

Q. Several dozen?

A. Yes. Not over, but up; they came from Sheep Creek.

Q. They didn't come from Douglas?

A. No, not in 1900.

Q. You didn't start rafting in September or October? A. Yes.

Q. And you quit on the 15th of October?

A. Yes.

(Testimony of Charles Biernoth.)

Q. And you brought about three rafts up a week?

A. Yes.

Q. And you say in 1903 and 1904 there was very little lumber brought over?

A. On rafts, yes. It was mostly brought over on scows.

Q. How frequently were you on the property in 1903 and 1904? A. Very seldom.

Q. How much? A. Very little.

Q. On this property in dispute?

A. Very little.

Q. How many times? A. I couldn't say.

[155—115]

Q. Once? A. Once or twice or so maybe.

Q. You haven't a clear recollection about it?

A. No.

Q. Have you a very clear recollection of what transpired in the earlier days, from 1900 down to 1902?

A. Well, it all depends on what it was. If it was something I was interested in, I might.

Q. You won't say how many times you brought over rafts? A. No, I don't.

Q. You know you didn't come over during the fall or winter? A. Yes, I am positive.

Q. It was only in the summer?

A. Only in the summer.

Q. And you didn't see any fish boats tied up on that beach? A. I did not.

Q. At any time during those years?

A. I did not. If there was any boats, they were

(Testimony of Charles Biernoth.)

farther this way, this side the iron works.

Q. No one used the beach at all?

A. There wasn't many boats here—the "Prospector" and the "Charley Stewart."

Q. You worked for Mr. James, the defendant in this case, from 1900 to 1904? A. I did.

Q. Are you working for him now?

A. I am not.

Mr. BAYLESS.—That is all. [156—116]

Redirect Examination.

(By Mr. GUNNISON.)

Q. Where did you live in the winter during those years?

A. Circle City Hotel. Mostly up on the bar.

Q. Up north of here? A. Yes.

Q. How much of the time would you be in town in the winter?

A. Sometimes I would be here all winter.

Q. During those years, from 1900 to 1904, those winters?

A. Well, I was mostly here. The winter of 1903-4 I was in California.

Q. In 1901 and 1902 were you in Juneau?

A. I was at the Circle City Hotel, yes, sir.

Q. Now, during that time did you see most of the boats that landed here in town?

A. Most all, yes.

Q. Most of the sea-going vessels? A. Yes, sir.

Q. What do you say as to whether or not any of them used that wharf during that winter?

A. Not to my knowledge.

(Testimony of Charles Biernoth.)

Q. Were you ever down to this place during the winters—those winters? A. Sometimes, yes.

Q. Did you ever see it used by any one in those winters? A. I did not.

Q. You testified that the raft swung—when did you usually take those rafts in there?

A. Usually on high tide. [157—117]

Q. And what was the length or size of the rafts?

A. Sometimes a hundred feet; more or less.

Q. And when you say they swung, how do you mean they swung?

A. Up and down with the current.

Q. One end would go with the tide? A. Yes.

Q. And you tied it at this point which you think is about where you have indicated on this map?

A. Yes.

Q. And you mean that would swing?

A. Up and down the channel.

Q. The free end of it would swing up and down and the head end pretty close to that pile?

A. Yes.

Q. Was there one or two piles there?

A. Only one pile that I recall.

Q. You testified in answer to a question of Mr. Bayless that you saw no boats on the beach; what part of the beach do you mean—that part in controversy? A. I do.

Mr. GUNNISON.—That is all.

Recross-examination.

(By Mr. BAYLESS.)

Q. Just one other question. Where did they land

(Testimony of Charles Biernoth.)

these scows? A. I do not know.

Q. You do not know? A. No.

Q. You never came over with the scows?

A. I did not. [158—118]

Q. Did you ever see any of them land on this particular beach in controversy? A. I did not.

Q. And this pile you have testified to might have been a little this side of where you indicated on that map, or might have been a little on the other side?

Mr. GUNNISON.—We object to that method of cross-examining—"It might have been here or there" as argumentative, irrelevant and incompetent.

The COURT.—Objection overruled.

Q. (By Mr. BAYLESS.) How about that, Mr. Biernoth? A. I do not know.

Q. You don't pretend that the position you pointed on that map is the identical place where that pile stood, do you? A. I do not.

Mr. BAYLESS.—That is all.

Redirect Examination.

(By Mr. GUNNISON.)

Q. Were there any scows brought over in 1900—there weren't any scows in 1900, were there?

A. No, I don't think so.

Q. When did they commence to use scows?

A. Over on the Island?

Q. In 1900, 1901, 1902 or 1903?

Mr. BAYLESS.—Object to that as leading.

Q. (By Mr. GUNNISON.) Well, when, what years?

A. There was scows used in 1901, 1902 and 1903.

(Testimony of Charles Biernoth.)

Q. 1900? A. No. [159—119]

Q. Were there rafts used in 1901, 1902 and 1903?

A. Once in a while a small raft.

Q. What was it you came over with?

A. Rafts.

Q. Well, whenever a raft came over, you came with it? A. Not always.

Q. How often? A. I couldn't say.

Q. Did you testify—have you testified that you came over in 1901, 1902 and 1903 with lumber?

A. Yes, occasionally I did.

Q. And landed at that place with lumber?

A. Yes.

Mr. GUNNISON.—That is all.

Recross-examination.

(By Mr. BAYLESS.)

Q. You only testified that you came over two or three times in 1901?

A. I do not know how often I came over, but I do not know how often.

Q. You do not know how often you came over in 1902, 1903 or 1904? A. No.

Q. And you do not know where those rafts landed when they came over? A. No.

Redirect Examination.

(By Mr. GUNNISON.)

Q. Which rafts do you mean?

A. When I wasn't with them.

(Witness excused.) [160—120]

[Testimony of Frank Roberts, for Defendant.]

FRANK ROBERTS, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. GUNNISON.)

Q. Will you state your name, please?

A. Frank Roberts.

Q. Your residence? A. Juneau, Alaska.

Q. Your age? A. Fifty-two.

Q. And your occupation?

A. Well, it is real estate, more or less—cabins and houses for rent.

Q. You reside here in Juneau? A. Yes, sir.

Q. Where do you reside in Juneau?

A. Down on the beach here, my house is.

Q. On lower Franklin Street? A. Yes.

Q. Just below Chief Johnson's house?

A. Yes, sir.

Q. How long have you lived there?

A. Over 20 years.

Q. Do you know George E. James?

A. Yes, sir.

Q. Do you know where the James gridiron is on the beach on the sea side of Front Street or Franklin Street? A. Yes, sir.

Q. Did you live there in that—were you in Juneau in 1900? [161—121] A. Yes, sir.

Q. Did you know George E. James at that time?

A. Yes, I believe I did.

Q. Did you ever see George E. James down in the

(Testimony of Frank Roberts.)

vicinity of the place where his gridiron now is in 1900?

A. I couldn't swear what year it was in; I have seen him there several years, off and on.

Q. Do you know how long ago it was you saw him first?

A. I couldn't state exactly what year it was in.

Q. Do you remember—for the purpose of refreshing your recollection—when the flume was built in the Last Chance Basin? A. Yes, sir.

Q. Was it any time near that?

A. Yes, just about that time.

Q. What did you see Mr. James doing in that vicinity down there?

A. He used to land lumber there, scows, rafts and one thing or another.

Q. At what point?

A. At the place where that gridiron now is.

Q. How long has he been doing that?

A. Well, off and on ever since, as near as I can tell.

Q. Do you know where the old Murray and Carroll wharf was? A. Yes, sir.

Q. Was that used as a landing place by vessels in the year 1900?

A. Well, let's see; it wasn't used as soon as this wharf was built down here, the P. C. wharf down here. It wasn't used after that was built, as near as I can recollect.

Q. At the time you first saw Mr. James using this waterfront, this piece of beach, tide land, to which

(Testimony of Frank Roberts.)

you have testified, was there any structure on it or building? [162—122]

A. Where that gridiron is?

Q. Where that gridiron is now?

A. Not to my knowledge.

Q. Have you ever seen any one else using this piece of beach except Mr. James?

A. Nobody but him and the Indians that lived there.

Q. Now, do you remember when this gridiron—well, I will withdraw that question—do you know Charley Biernoth, the witness who just left the stand?

A. No, sir, I do not. I have seen him a few times before, but didn't know his name.

Q. Did you know him in 1900?

A. No, sir, I did not.

Q. Do you remember when the first gridiron was built on this piece of ground?

A. Well, it was several years ago; I don't remember the exact date.

Q. You don't remember the exact date?

A. No.

Q. Has there been at any time—well, I will withdraw that question—Who have you seen use that gridiron?

A. Well, just Mr. James, I guess, and his scows and lumber that he brought over there—only one I know of outside of lately, some one putting in gravel there—I don't know who is doing that.

Q. Now, between 1900 and the present time, have

(Testimony of Frank Roberts.)

you ever seen any one other than—who, if any one, but George E. James, have you seen use that water front and gridiron?

Mr. BAYLESS.—Just a minute. There is no testimony to indicate that Mr. James ever used the gridiron in 1900.

Mr. GUNNISON.—I mean the waterfront—I mean that piece of waterfront.

A. Nobody that I have seen use it outside of Mr. James bringing [163—123] scows and rafts over there.

Q. Since that gridiron was constructed have you ever seen any one use it other than Mr. James?

A. Not to my knowledge.

Q. Have you ever seen the Pacific Coast Company land any vessels there? A. No, sir.

Q. Do you remember when the street was built down there as far as your place?

A. Well, it was a few years ago. I don't know just what date, no, sir. I know it was quite a few years ago.

Q. You don't remember the date?

A. No, not just exactly—probably eight or ten years ago.

Q. How long have they been using that as a public street from Goldstein's down to where you live; are you able to give the number of years?

A. It has been over twenty-six years to my knowledge.

Mr. GUNNISON.—That is all.

(Testimony of Frank Roberts.)

Cross-examination.

(By Mr. BAYLESS.)

Q. What did that public street consist of, Mr. Roberts, twenty-six years ago?

A. Nothing but open beach. We used to walk along the beach.

Q. It wasn't planked over at all?

A. No, sir, it wasn't.

Q. Was it planked ten years ago?

A. Well, when they built the street, that is the only time it was planked. I made a kind of a walk there myself about eighteen or twenty years ago. [164—124]

Q. You put that in yourself?

A. That is, I spread a few planks along the beach where there was water.

Q. The city didn't do that, did they?

A. No, I did that myself.

Q. About eighteen years ago?

A. Somewhere along there.

Q. When did the city build the street?

A. I don't remember—after Jorgenson built his mill down there, whenever that was; I don't know the exact date. If you look in the records you can find out.

Q. How long has the street been past the gridiron?

A. When the contractor built the street clear from Goldstein's to the sawmill.

Q. It wasn't from the Juneau Iron Works?

A. Well, somewhere about there.

Q. Do you know exactly where that started and

(Testimony of Frank Roberts.)

finished? A. Well, somewheres down there.

Q. You are not quite sure? A. No.

Q. You don't know what year it was?

A. No, not exactly.

Q. Did you ever see Mr. James clear the beach of boulders?

A. Well, I have seen him around there several times with boats and scows, one thing or another.

Q. How often did you see him in the summer time?

A. Well, I wasn't around always in those days; I used to work up at Chilkat.

Q. How much of the time have you been in Juneau since 1900?

A. Well, I have been here, I believe I have been in this town over twenty-four years—twenty-six.
[165—125]

Q. You have been here in Juneau?

A. Yes, in this town.

Q. You have been here twenty-four years?

A. About twenty-six, taking it all through.

Q. Where were you in 1900?

A. I don't know exactly. I might have been up at Chilkat in the summer time.

Q. That is the summer of 1900. Well, during the winter of 1900 did you see Mr. James or any of his agents?

A. I think I was hunting in the winter time in those days.

Q. In the year 1901 where were you?

A. Well, I am not sure just where I was, either

(Testimony of Frank Roberts.)

here or in the summer time at the cannery at Chilkat.

Q. You were away during most of the summers?

A. In those days I was up at Chilkat for five or six seasons, during the early days.

Q. From 1900 to 1905, or somewhere thereabouts?

A. From '88 and '89.

Q. From '88 and '89, yes. Were you up there in 1900.? A. I ain't sure; I couldn't swear to that.

Q. Well, I would like to account for your time from 1900 to 1906—summers and winters—where were you during those winters?

A. I think I was around here the biggest part of the time those days.

Q. Have you got a clear recollection?

A. No, I don't know exactly just where I was in those days, most of the time here.

Q. You recall that you saw Mr. James bringing over rafts? A. Yes.

Q. Was Mr. James with these rafts? [166—126]

A. Sometimes he was.

Q. Well, how frequently would he be with them?

A. I couldn't say, because I didn't see every raft that come in. Occasionally I would see a raft with lumber.

Q. Did they ever have occasion to move any of the fishing boats away from there so they could land?

A. Not to my knowledge.

Q. Did you ever see any fish boats or other boats beached there?

A. No, not around there I don't think; I don't remember of them.

(Testimony of Frank Roberts.)

Q. Have you ever seen boats beached in that vicinity?

Mr. GUNNISON.—We object to that on the ground that it is irrelevant, incompetent, and immaterial,—too indefinite “That vicinity.”

Q. (By Mr. BAYLESS.) Between the Carroll wharf buildings and the present C. W. Young wharf?

Mr. GUNNISON.—Object to that as being too indefinite.

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception.

Q. (By Mr. BAYLESS.) Did you ever see any fish boats or other kind of craft laying up there?

A. There might have been some anchored there in front, but I couldn't swear just when it was.

Q. What I am getting at is this: Are you prepared to swear that Mr. James is the only person who ever used that beach where the girdiron is now?

Mr. GUNNISON.—Object to that as irrelevant, incompetent, and immaterial. The witness has never testified to anything of the kind.

The COURT.—He may ask him the question.

A. As I said before, I have seen him use the beach and the Indians also. [167—127]

Q. Did you ever see Indian canoes tied up there?

A. Why sure.

Q. Right where that gridiron is now?

A. Well, above and below there, yes.

Q. Did you see anybody else using that beach besides Mr. James?

A. Well, there might have been a boat occasion-

(Testimony of Frank Roberts.)

ally land there, but I couldn't swear just how many there was.

Q. Well, now, how often did Mr. James come over with his scows or rafts?

A. I never kept tab on that.

Q. You don't know? A. No.

Q. He didn't make regular trips over there, did he? A. Well, not to my knowledge.

Q. Do you know who built the first gridiron there?

A. Well, I think Mr. Webster.

Q. You think Mr. Webster did? A. Yes.

Q. Do you remember when it was built?

A. No, I don't remember what year it was.

Q. Do you know who used it?

A. Well, Mr. James.

Q. Mr. James used that gridiron?

A. I believe he did, yes.

Q. You are sure of that?

A. Well, I have seen him there, bringing scows and rafts.

Q. Do you know how many gridirons there have been down there on that property?

A. Only that one that I know of. There was a piece of one that was torn out.

Q. Do you know who built the first one?

A. I thought Mr. Webster did. [168—128]

Q. And you have seen Mr. James use that, have you, and then you saw him use the one that is there now? A. Yes.

Q. And he used to come over with his scows on that same piece of beach? A. Yes, sir.

(Testimony of Frank Roberts.)

Q. Well, is there any difference between this present gridiron and the one that was there first?

A. Well, I think this one that is there now is more substantial than the one there before.

Q. In the same position?

A. Just about the same location.

Q. The one that was there first didn't have any approaches to the street? A. No.

Q. There was no street there at that time?

A. No.

Q. And the approaches to this gridiron were built after the street was in? A. Yes.

Q. Do you know whether or not any lumber was brought up from the Wrangell sawmill and landed on that gridiron?

Mr. GUNNISON.—We object to that as not proper cross-examination.

Mr. BAYLESS.—It is to show that somebody else used the beach besides Mr. James.

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception.

Q. (By Mr. BAYLESS.) Do you remember the time they built the Perseverance Mill?

A. Well, I believe I remember something about it, yes. [169—129]

Q. Do you remember where those timbers came from? A. No.

Q. You don't know where those mill timbers came from?

A. No, I don't recollect. I didn't pay much attention.

(Testimony of Frank Roberts.)

Q. Do you know whether they were furnished by Mr. James or the Wrangell sawmill?

A. I couldn't swear to that.

Q. Do you know whether or not Mr. James was using this gridiron at the time these mill timbers were furnished for the Perseverance Mill?

A. I couldn't swear to that.

Q. What is your best recollection?

A. It was used, but I don't remember who was using it at that time.

Q. Mr. Roberts, do you know the scow which used to come up here from Wrangell?

A. Yes, I do.

Q. Do you remember where that scow landed?

A. Well, they used to tie it very often at the Young Dock there, that is, where the ferry float is. They used to unload lumber on the Young Dock.

Q. Did they ever land that on that gridiron?

A. Not to my knowledge.

Q. You don't know that? A. No.

Q. You don't know when they first came up here?

A. I couldn't swear to the date it has been so many years ago.

Q. Do you know whether or not it did land at that gridiron? A. I couldn't swear to that.

Mr. BAYLESS.—That is all. [170—130]

Redirect Examination.

(By Mr. GUNNISON.)

Q. You say you think Mr. Webster built the first gridiron down there; what happened to that first gridiron, do you remember?

(Testimony of Frank Roberts.)

A. Well, it got tore loose there one time, I don't know whether it was the high tide or what did it. I noticed once there was part of it tore away.

Q. And how long afterward was another gridiron put in?

A. It wasn't long. I couldn't swear just how long, but not very long.

Q. Have you any recollection how that was constructed, that first gridiron, or platform, or whatever it was? A. No, I couldn't say.

Q. You haven't enough of a recollection?

A. I didn't pay much attention to it.

Q. You say the gridiron that is now there is in about the same locality. What do you mean, with reference to the beach line or how do you mean that is generally in the same situation?

A. As near as I can tell, in the same place about.

Q. On the beach, do you mean?

A. Yes, the same place, as near as I can tell.

Q. What do you say with reference to the character of the two gridirons as to which is the more substantial?

A. I mean this one is more substantial, stronger—piles built there.

Q. Permanent?

A. Permanent, yes. The other more in a hurry. It lay loose like and was carried away, but these are drove in good and solid and made to stay. [171—131]

Q. And you don't remember exactly when that was done?

(Testimony of Frank Roberts.)

A. No, not the exact year; I never paid much attention to it.

Q. Have you any idea about how long ago it was.

A. Well, it was several years ago; I couldn't swear just when.

Q. Do you know what made that old platform go out of there? A. No, I didn't see it go out.

Q. You know it did go out?

A. I know it got tore out some way; I don't know how—never saw it go out.

Q. And you know this is a different one?

Mr. BAYLESS.—Object to that as leading.

Q. (By Mr. GUNNISON.) What do you say as to whether or not this is the same or a different one?

A. This is a different one.

Mr. GUNNISON.—That is all.

Recross-examination.

(By Mr. BAYLESS.)

Q. Mr. Roberts, are you prepared to swear positively that that old gridiron was entirely torn out and this one was redriven?

A. I couldn't swear to that, that it was entirely tore out or not; it was partly tore out.

Q. Are you prepared to swear that this is an entirely new gridiron, or the old one repaired?

A. Well, I wouldn't swear positively that it was entirely new or not.

Mr. BAYLESS.—That is all. [172—132]

Redirect Examination.

(By Mr. GUNNISON.)

Q. What do you say—did you say that old grid-

(Testimony of Frank Roberts.)

iron ever was down, broken? A. Yes.

Q. Did you see them haul it away?

A. I think the tide hauled it away, biggest part is what I said.

Recross-examination.

(By Mr. BAYLESS.)

Q. Did you have—

The COURT.—My goodness, when are you going to get through with this witness? Is there any new question on cross-examination, your original cross-examination, you want to bring out? There is nothing that has been developed in the last three recross-examinations that bears on this question at all. If you haven't anything more than what has been done, I will have to discharge this witness.

Mr. BAYLESS.—That is all.

(Witness excused.) [173—133]

[Testimony of Sam Kohn, for Defendant.]

SAM KOHN, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. Gunnison.)

Q. State your name, Mr. Kohn?

A. Sam Kohn.

Q. And your residence? A. Juneau.

Q. What is your occupation?

A. I am doing nothing at present.

Q. Do you know George E. James, the defendant in this case? A. Yes, sir.

Q. How long have you lived in Juneau?

A. Off and on since 1881.

(Testimony of Sam Kohn.)

Q. Do you know Charles Biernoth?

A. Charles Biernoth, yes, sir.

Q. Do you know where the gridiron, the James gridiron is, on lower Franklin Street? A. Yes.

Q. Are you familiar with that ground?

A. Well, I have known the ground there ever since I have been here.

Q. Have you been familiar with it since 1896?

A. Well, I haven't been familiar with it.

Q. I mean do you know—you have seen it frequently since 1896? A. Yes, sir.

Q. Do you know the old Murray and Carroll wharf? A. I do.

Q. Have you ever seen Mr. James and Mr. Biernoth on that piece [174—134] of tide land upon which Mr. James' gridiron is?

Mr. BAYLESS.—I object to that as leading.

Mr. GUNNISON.—Answer it yes or no.

Mr. BAYLESS.—And suggestive.

The COURT.—Objection overruled.

A. I have seen them both there.

Q. When was the first time you saw them there, if you can remember?

A. I couldn't tell you the exact date I saw them clear off the beach, rolling boulders and working there.

Mr. BAYLESS.—We move to strike the balance of the answer as not responsive.

The COURT.—Motion denied.

Q. (By Mr. GUNNISON.) Are you ablt to place that with reference to any event that transpired here

(Testimony of Sam Kohn.)

in Juneau or vicinity?

A. I don't exactly understand.

Q. Was there any structure or building being done here about that time when you first saw them there?

A. Any structure?

Q. Yes, a flume or anything of that kind?

A. No, not that I recollect of.

Q. Do you remember when the Last Chance Flume was built? A. Yes.

Q. Was it about that time?

A. Along about that time, yes, sir.

Q. Now, what were they doing on that piece of tide lands, the tide lands in controversy, when you saw them first?

A. The first attraction I saw was clearing off the ground, rolling rocks out of the way and then building a gridiron to unload lumber or anything from scows, which they afterward did.

Q. When did they build that gridiron? [175—135]

A. I wouldn't be positive when, because I didn't pay particular attention—I wasn't interested in it—but I think it was about the time they were constructing this big flume up in the basin, the time the lumber was coming up from Sheep Creek.

Q. From Sheep Creek?

A. I think that is the first place James had his saw-mill.

Q. And that was when they were clearing the ground? A. At that time, I should judge.

Q. At that time you first saw Mr. James, or at any

(Testimony of Sam Kohn.)

time prior thereto, saw Mr. James and Mr. Biernoth on this ground in question, was there any structure or anything of the kind on that ground?

A. Not that I know of.

Q. Was the Murray and Carroll wharf being used as a place of landing by sea-going vessels at that time?

A. No, sir, that was abandoned, the outer portion was.

Q. What was the interior portion used for?

A. Well, in those days there was a sardine factory there and small vessels used to come there. A portion of the old T on the outside—the bridge that led outside—there was a vacant space between the piece that was left outside and the dock.

A. You mean that some of the bents in the approach were gone?

A. Yes, and boats used to come in between those and unload the sardines. That is about the only time I have seen that in use.

Q. Who, if any one, have you seen use that piece of waterfront between the time when you first saw Mr. Biernoth and Mr. James—I mean by “that piece of waterfront” the place where the gridiron is?

A. I have never seen any one use it [176—136]

Q. By anyone, who do you mean?

A. No one outside of James and Biernoth and I have seen scows landing there with lumber.

Q. Whose scows?

A. Belonged to Mr. James, I suppose.

Q. Do you remember when the gridiron was built?

(Testimony of Sam Kohn.)

A. I couldn't say positively.

Q. Approximately how long ago?

A. Well, I know it has been built since I have been living down there, and I bought that piece of property where I am living in 1908.

Q. You bought it in 1908?

A. Yes, that is the year, I think it was, and I think that gridiron has been there all the time I have lived down there.

Q. Do you know whether it was there before you lived there? A. I couldn't say positively.

Q. But it has been there ever since you have lived there? A. Yes.

Q. Who has used it?

A. Mr. James and I think the Gastineau Mining Company had their powder and stuff on it too.

Q. The Gastineau Mining Co.?

A. I think so.

Q. How long ago?

A. Several years ago. They fetched powder over from Treadwell and landed it there.

Q. You don't mean the Gastineau?

A. Well, that company up in the Basin, whatever it is.

Q. Now, do you remember what year the street was built down there? A. The plank road?

Q. Yes, sir.

A. I can't say positively. It was built before I moved down. [177—137] I couldn't say as to the exact year.

Q. All the way down?

(Testimony of Sam Kohn.)

A. All the way down to the sawmill.

Mr. GUNNISON.—That is all.

Cross-examination.

(By Mr. BAYLESS.)

Q. When did you first come here, Mr. Kohn?

A. First come up here? 1881.

Q. That is, before the old Carroll Dock was built?

A. Yes.

Q. When was the Carroll Dock built?

A. I think in '83, wasn't it? I wouldn't be sure.

Q. Do you know how the boats used to tie up to the Carroll Dock in the early days?

Mr. GUNNISON.—We object to that as not proper cross-examination.

Mr. BAYLESS.—Preliminary.

The COURT.—What is it preliminary to?

Mr. BAYLESS.—I am going to try to find out whether Mr. Kohn will support Charley Wells in his testimony as to the occupation of this particular piece of ground by means of having stern lines to the piles on the corners.

The COURT.—That is your case, isn't it? You are cross-examining this witness.

Mr. BAYLESS.—Your Honor will prevent me from inquiring into his knowledge of the property prior to 1900?

The COURT.—I sustain the objection to the question because it is not proper cross-examination.

Mr. BAYLESS.—Will your Honor indicate whether I will be able to ask any questions regarding— [178—138]

(Testimony of Sam Kohn.)

The COURT.—Ask the question and I will rule on it.

Q. (By Mr. BAYLESS.) Mr. Kohn, have you any knowledge—did you know that property prior to 1900?

Mr. GUNNISON.—We object to that on the ground that it is incompetent, irrelevant, and immaterial, and not proper cross-examination.

The COURT.—The objection is sustained on the ground that it is not proper cross-examination. He hasn't testified to anything except beginning from 1900. Any thing he has testified to, you are entitled to cross-examine him on, but you cannot prove your case by the defendant's witness, because you have closed your case.

Q. (By Mr. BAYLESS.) Do you know the situation of the beach in 1900—this particular portion of the beach? A. That portion in litigation?

Q. Yes. A. I do.

Q. What was the situation there then?

A. It was a barren piece of beach.

Q. Barren piece of beach? A. Yes.

Q. Was anyone using it?

A. Not that I know of. I never saw any one using it outside of Mr. James.

Q. Did any fish boats ever land there?

A. Fish boats could lay there on account of the rocks.

Q. Did you ever see any Indian canoes tied up there?

A. As far as that is concerned, I couldn't say posi-

(Testimony of Sam Kohn.)

tively whether there was or wasn't.

Q. Do you remember when Mr. James brought scows over there?

A. I couldn't tell you the exact date. I wasn't particularly [179—139] interested in it. I was passing by there and discovered them, of course.

Q. Do you know how much they cleared?

A. No.

Q. What work did you see Mr. James doing?

A. Rolling rocks off, clearing off the ground for some purpose, clearing for the gridiron.

Q. Was that gridiron built there right after it was cleared?

A. It was some time afterwards; I couldn't say the exact time.

Q. Was it a year afterwards?

A. It might have been.

Q. It might have been six years?

A. Oh, no, it wasn't that long.

Q. It wasn't six years?

A. I don't think it was.

Q. Was it two years?

A. I wouldn't be positive, I don't want to swear positively, it might have been six months, or three months, or perhaps a year.

Q. You would say it wasn't more than a year?

A. I wouldn't be positive what time it was.

Q. What is your best recollection?

A. I couldn't say—I paid no particular attention to it. It might have been put in just after they cleared the rocks off, as far as I know.

(Testimony of Sam Kohn.)

Q. How frequently after Mr. James cleared the beach did he bring over his scows?

A. That I paid no particular attention to.

Q. How many times did you see him?

A. Well, I couldn't say.

Q. Once? [180—140]

A. Oh, yes, more than once.

Q. Two or three times?

A. Well, I wouldn't be positive how much it may have been. I seen him unloading lumber when passing by and I would go up town and come back in a couple days and see him unloading lumber again. It might have been the same scow I saw before; might have been three or four days unloading one scow. It might have been one scow or a half dozen.

Q. Was this in the summer-time?

A. Summer-time, yes.

Q. Did you ever see Mr. James land scows there in the winter or fall? A. Yes.

Q. What part of the winter?

A. During the winter months, it might have been September or October.

Q. Did you ever see him from November to April?

A. He may have landed them there but I didn't pay no particular attention.

Q. Did you ever see him land lumber there in the winter-time? A. Not that I noticed.

Q. About how many times have you seen Mr. James land his rafts and scows?

A. As I told you before, I never kept any accurate account of it. I haven't any idea—he may have

(Testimony of Sam Kohn.)

landed a hundred, may have landed only five. I wasn't interested in the proposition—why should I take such an interest in it?

Q. You don't know?

A. No, I had no business to know.

Q. Can you swear positively, Mr. Kohn, that no one else used that beach except Mr. James? [181—141]

A. Could I swear positively? No, I couldn't swear positively.

Q. As far as you know, there might have been other occupants?

A. There might have been other boats—I don't know of anybody else ever using that particular piece of ground.

Q. Did you ever see any other boats laying there?

A. No.

Q. Ever see any canoes there? A. No.

Q. You never saw anybody else but Mr. James?

A. No, I don't think I did.

Q. But you didn't see Mr. James very often?

A. Well, I don't know how often. I have seen him frequently; how many times I never kept account of it.

Q. Do you remember the time the gridiron was built? A. Not the exact date.

Q. Do you know the appearance of the gridiron as it was first constructed?

A. Well, not exactly the gridiron. I wouldn't call it a gridiron. There was some scaled posts put there and beams across for the scow to rest on and a num-

(Testimony of Sam Kohn.)

ber of times I have seen scows capsize there when the tide would come and upset them.

Q. Do you know who these scows belonged to?

A. I supposed they belonged to the James Saw-mill.

Q. Did you ever see scows from Wrangell unload there?

A. They may have been from Wrangell and may have been from 'Frisco, for all I know.

Q. Do you remember the time the Perseverance Mill was built? A. I do.

Q. Do you know where the mill timbers were brought from? A. I do not.

Q. Do you know where those mill timbers were landed? [182—142] A. I do not.

Q. Do you remember whether or not they were landed on this gridiron? A. I couldn't say.

Q. Do you know who built this gridiron?

A. It was supposed to be built by James.

Q. I know, but do you know?

A. That was the supposition.

Q. Do you know who built it? A. I do not.

Q. Did you see it when it was being constructed?

A. No, not that I know of.

Q. You saw it after it was built? A. Yes.

Q. How many gridirons were built there?

A. How many? I couldn't tell you.

Q. Is this gridiron that is on there now in the same position the first one was in?

Mr. GUNNISON.—We object to that. The wit-

(Testimony of Sam Kohn.)

ness hasn't testified that there was any first or second gridiron.

The COURT.—Objection overruled.

Q. (By Mr. BAYLESS.) Is this the gridiron that was on the property at that time?

A. There may have been others, but it is the only one I have seen. I think it is the same one Casey lost his horse off of.

Q. Do you know when the approaches to the gridiron were first built? A. That I couldn't say.

Q. Was there any street down there when the gridiron was first constructed? A. What year?

[183—143]

Q. Past the gridiron when it was constructed?

A. Yes.

Q. There was a street there?

A. There was a street there ever since Juneau was established.

Q. A plank street?

A. No, not a plank street.

Q. When was that constructed?

A. I couldn't tell you; I think the gridiron was there first.

Q. And afterwards the street?

A. I think so.

Q. Were there any approaches?

A. There was a kind of a road that led down to it, a wagon road the same as was down there along the beach.

Q. Where did the plank road end at that time?

A. There was no plank road at that time.

(Testimony of Sam Kohn.)

Q. Where did the plank road end at the time when the gridiron was first built?

A. I don't know now, to be sure, whether the plank road was in existence at that time, at the time that was built. I kind of think the gridiron was there prior to the time the plank road was built.

Q. How did you get down to the beach from the lower part of Franklin Street—part of Franklin Street was constructed, wasn't it, at the time the gridiron was built?

A. It might have been up town here. In the early days here there was no timbers at all, no planks at all; it was open right down the beach all the way through.

Q. Mr. Kohn, you said that in 1900, or thereabouts, the Carroll-Murray Dock was used as a sardine factory?

A. I think it was about that time and afterwards a glove factory. That was about all I know of who used that place. [184—144]

Q. Frank Forrest has been using that as an iron works, hasn't he?

A. That was above. Not using that building; Frank Forrest is on this side.

Q. There is a foundry there on those tide lands, isn't there? A. Yes, foundry the other side.

Q. Do you know the old Carroll-Murray wharf site? A. I know where the wharf was, yes.

Q. Do you know how big that was?

A. I haven't the least idea; I don't know how much they claimed.

(Testimony of Sam Kohn.)

Q. Do you know much about this beach prior to 1908, the beach in controversy?

A. No, I don't know much about the beach only since I moved there.

Q. How frequently did you have occasion to go down where the gridiron is now prior to 1908?

A. I would go down there quite often; I was interested in the Sheep Creek Basin, have got mines there, and a great many times I used to walk down that way. Another thing, I had acquaintances down that way.

Q. You say the Gastineau Company used to land powder there?

A. I think it was them. I have seen powder landed there. It was landed there on account of this gridiron—there is a plank there like that (indicating)—and powder was landed and hauled away, and whether it was the Gastineau or the Treadwell I couldn't say which company.

Q. Did you ever see mill timbers landed there for the Gastineau Company? A. No.

Q. Are you certain—was powder the only thing landed there?

A. No, I have seen the Treadwell Company have loads for this iron work, transformers and things.

[185—145]

Q. For power lines?

A. Power lines I suppose they used the posts for.

Q. Mr. Kohn, were there any stakes to indicate the boundaries of the property now occupied as a gridiron? A. Stakes?

(Testimony of Sam Kohn.)

Q. Yes.

A. There might have been and there might not have been.

Q. Did you ever see any boundary stakes?

A. I never looked for any.

Q. Were there any marks to define the boundaries of the ground claimed by Mr. James?

A. Not that I know of.

Q. Do you know how much ground he actually claimed? A. I do not.

Mr. BAYLESS.—That is all.

(Witness excused.)

(Whereupon court adjourned until 2 o'clock P. M. the same day, when court reconvened pursuant to adjournment.) [186—146]

[Testimony of W. W. Casey, for Defendant.]

W. W. CASEY, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. GUNNISON.)

Q. State your name. A. W. W. Casey.

Q. And your occupation.

A. Transfer business.

Q. Where do you live? A. Juneau.

Q. How long have you lived here, Mr. Casey?

A. About seventeen years.

Q. What occupation were you engaged in in 1900 here?

A. Transfer business. It was in 1900, I think. I am not positive whether I bought them out in the

(Testimony of W. W. Casey.)

fall of 1900 or early in 1901. I think I did—I couldn't tell to save my soul.

Q. Well, that is close enough. Do you know George E. James? A. Yes, sir.

Q. Do you know the place on the beach known as the old Murray and Carroll wharf? A. Yes, sir.

Q. Do you know the portion of the beach lying south of that where the James gridiron is located?

A. Yes, sir.

Q. Have you ever done any hauling from that point on the beach?

Mr. BAYLESS.—Object to that as immaterial.

Mr. GUNNISON.—Preliminary.

The COURT.—Objection overruled.

A. Yes, sir. [187—147]

Q. (By Mr. GUNNISON.). How often have you been at that point on the beach since the time you took over the transfer business in Juneau?

A. Practically every day.

Q. It has been a place where you have been frequently? A. Yes.

Mr. BAYLESS.—Object to that as leading.

The COURT.—Objection overruled.

Q. (By Mr. GUNNISON.) Now who, if you know, has used that portion of the beach from—well, I will withdraw that—did you do any hauling from there in the year 1901, if you remember?

A. From that particular place you mean?

Q. Yes, sir, down in there. A. 1901?

Q. Yes, sir, in that section, from that piece of beach.

(Testimony of W. W. Casey.)

A. I think we used to haul lumber from the mill. I don't remember when the mill was built. We hauled lumber over that beach.

Q. From what mill?

A. From the Jorgenson mill; I don't remember when that street was put in.

Q. Do you know if George E. James has ever used that piece of beach where his gridiron now stands before the gridiron was there?

A. I have hauled lumber from there on a scow.

Q. Whose scow was it? A. Mr. James.

Q. Delivered there from the James sawmill?

A. Yes.

Q. For how many years have you hauled lumber from the James scow beached at that point? [188—148]

A. Well, before the street was built; I don't remember when that was. That was probably twelve or thirteen years ago.

Q. At the time you first commenced hauling lumber from there, was the Murray and Carroll wharf used as a public wharf—I will withdraw that question—from the time you first commenced to haul lumber from that point on the beach, what do you say as to whether or not sea-going vessels, or any vessels, landed at the Murray and Carroll wharf?

A. That is, you mean the old cannery?

Q. Yes, sir.

A. I do not know. I never knew it was a wharf.

Q. You didn't know it was a wharf?

A. No, not in my time.

(Testimony of W. W. Casey.)

Q. Now, do you remember when the street, the present street was extended?

A. Not as to dates. I remember the time.

Q. Now, what do you say with reference to the extension of the street—I will withdraw that—do you remember when the present gridiron that is located on there was constructed? A. Yes, sir.

Q. How long was that before or with reference—when was that constructed with reference to the building of the street, the present plank street?

A. I think it was soon after, probably a few months; I am not just positive.

Q. Do you know who built that?

A. I see Mr. James working there and I was hauling lumber from there as soon as he got the wharf done.

Q. As soon as he got it up?

A. Yes. [189—149]

Q. And had you hauled—what do you say as to whether or not you had hauled lumber from that same place prior to that time and for how long a period, Mr. Casey,—covering what period of time?

A. Well, I hauled from there, from scows, but I wouldn't say how long—I would have to look at my books to refresh my memory as to where I got my loads.

Q. Do I understand you to say it was the James scow?

A. That is what we knew it by. I would tell the teamster to go down to the James scow.

Q. And he would go there?

(Testimony of W. W. Casey.)

A. Down about where the gridiron is.

Q. How do you designate it now?

A. Just below the old cannery.

Q. When you would tell the teamster to get lumber from the James scow, where would he go to get it?

Mr. BAYLESS.—I object to that as incompetent.

Mr. GUNNISON.—Well, designating knowledge of the public.

Mr. BAYLESS.—You can't prove your case by general reputation.

The COURT.—You can prove, in order to know what Mr. Casey is talking about you may ask him. Objection overruled.

A. He would go down to the beach where the gridiron now stands.

Q. If you were to tell him you wanted to get some lumber from James now, where would he go?

A. Down on the gridiron.

Q. This same gridiron? A. Yes.

Q. Has that ever been to your knowledge used by the Pacific Coast Co.? [190—150]

A. Why, I do not know.

Q. Have you ever seen a Pacific Coast Co. boat land there? A. I don't think I ever did.

Mr. GUNNISON.—That is all.

Cross-examination.

(By Mr. BAYLESS.)

Q. Mr. Casey, are you interested with Mr. James in any business enterprises? A. No, sir.

Q. When did you first engage in the transfer busi-

(Testimony of W. W. Casey.)

ness in Juneau? A. I don't remember the date.

Q. Whom did you buy the transfer business from?

A. I staked a fellow to it first, George Saums; they didn't make it go and I took it over.

Q. Do you know when you started to haul lumber for Mr. James?

A. I couldn't tell you the dates. I suppose—I hauled it before the street was put in.

Q. You do not know how many years?

A. We used to go down to Forrest's right where the incline is and haul lumber. I think that was in ninety-seven, or eight or nine—I couldn't tell just from memory; I could tell from looking over my slips.

Q. You think it was ninety-seven, eight, or nine?

A. No, along pretty near—after I came and I came in '98; it was later than that, come to think about it. Two or three years—about that—it might have been 1900 and might have been 1902 for all I know.

Q. Did Mr. James have any structures on the tide lands then at this spot? [191—151]

A. Oh, he tied up to something, might have been a pile or something, I do not know.

Q. Do you remember how he did tie—he didn't have a gridiron at that time, did he?

A. Not at first, no.

Q. Do you recollect when the first gridiron was put there?

A. I couldn't tell you as to dates. I never gave it a thought.

(Testimony of W. W. Casey.)

Q. Do you know who built that first gridiron?

A. I see James and Ed Webster working on it. I was there a good deal.

Q. Did you ever see anybody else working on it?

A. Well, their men; I don't know who they were, of course.

Q. Is that the gridiron standing there now?

A. Yes, or portions of it.

Q. And Mr. James' scows used to land at the same spot where the gridiron is now?

A. Over right about there. Right out from there maybe.

Q. Did you see any stakes to indicate the boundaries of beach claims?

Mr. GUNNISON.—We object to that as irrelevant, incompetent and immaterial.

The COURT.—Boundaries of what claim?

Mr. BAYLESS.—Of the beach claimed by Mr. James.

The COURT.—Objection overruled.

A. No, I didn't pay any attention to that.

Q. (By Mr. BAYLESS.) Do you know how much of that beach Mr. James actually used?

A. No.

Q. Before the gridiron was put in did you ever notice evidences of boundaries to define his occupation?

A. Nothing only there was a piece of beach there that was cleared [192—152] off and they landed the scow within twenty, or thirty, or forty feet from that center; it might have been a little to either side,

(Testimony of W. W. Casey.)

but it was cleaned off from rocks and they landed at that particular spot.

Q. Did you ever haul any lumber for the Perseverance Company? A. For them?

Q. Yes, sir. A. Yes, sir, I did.

Q. From this gridiron? A. Yes, sir.

Q. Do you know where that lumber was obtained?

A. It came there in scows from across the river—across the bay.

Q. Did any of it come from Wrangell?

A. I do not know.

Q. Were you here when the Perseverance Mill was built? A. Yes, sir.

Q. Did you haul any mill timbers to the Perseverance? A. Yes, sir.

Q. Where did you get them?

A. Off that slip, I think.

Q. Off this same gridiron? A. Yes.

Q. And you hauled them to the Perseverance?

A. Yes, sir.

Q. How long did the hauling of these mill timbers and supplies continue?

A. Two or three years, off and on.

Q. And that lumber came from Wrangell?

A. It might; I don't know.

Q. You know the mill timbers were delivered on that gridiron and hauled by you to the Perseverance? [193—153]

A. I know some of them were; might not be that all of them were; I can't remember.

Q. Do you know, actually know, whether they

(Testimony of W. W. Casey.)

came from Mr. James or the Wrangell sawmill?

A. I don't know.

Q. Were the old Carroll-Murray wharf buildings being occupied at that time?

A. They may have been; some one may have been living in them.

Q. Was there ever a sardine factory down there?

A. Yes.

Q. Did you ever see any fish boats land in there, herring boats?

A. They tied them around there some place.

Q. Did you ever see any fish boats beached near or in the neighborhood of the present gridiron?

A. I don't know that I ever did.

Q. Did you ever see anyone occupying this beach where the gridiron is now outside of Mr. James.

A. They might. I didn't pay any attention to that.

Q. Do you know whether or not anybody else did occupy it except Mr. James?

A. I presume they did.

Q. Did you ever see anybody?

A. I don't know who they were, if they did.

Q. Did you ever see any boats there?

A. See boats around there, yes.

Q. Did you ever see any Indian canoes?

A. Yes, I suppose so.

Q. How often did Mr. James bring over scow loads of lumber before the gridiron was built?

A. I couldn't tell you. [194—154]

Q. Did he bring them over in the winter-time?

(Testimony of W. W. Casey.)

A. Oh, yes, could bring them any time.

Q. Do you remember seeing any of them in the winter-time? A. I don't know.

Q. The sawmill was closed down in the winter?

A. I suppose so.

Q. Wasn't it during the summer-time?

A. He did his lumber business in the summer, but you could always get lumber in the winter-time.

Q. And he brought them over, the scows?

A. Yes, I suppose so. I have seen him bring it here in the winter-time in scows.

Q. You never saw any—you don't know when the plank street was put down there?

A. I don't remember the date.

Q. The gridiron as first constructed did not have any approach to the street, did it?

A. Yes, sir; oh, it might not from day to day, but they built an approach very soon, right away.

Q. Was the plank street put down there before the gridiron was built?

A. If I remember right, it was.

Q. Then the gridiron was built and then the approach from the street to the gridiron was built?

A. Yes, I think it was all built about the same time.

Q. How many approaches were there first?

A. One.

Q. Was that toward the Carroll Dock?

A. Toward town.

Q. How much later was it before the other approach was built? [195—155]

(Testimony of W. W. Casey.)

A. Why, I think the other approach has been built three or four years, probably longer.

Q. How positive are you about dates, Mr. Casey?

A. It depends upon what you are talking about.

Q. I mean as to the things you have testified to?

A. As to the date of the approach, you mean?

Q. Yes.

A. I didn't testify as to what date it was built.

Q. I mean with reference to the building of the street?

A. I didn't testify what date it was built.

Q. I know you didn't testify as to that, but how long after the street was built was the gridiron constructed?

A. I don't know; I think the next spring.

Q. You are sure the street was built first?

A. I am positive, quite positive, yes.

Mr. BAYLESS.—That is all.

Redirect Examination.

(By Mr. GUNNISON.)

Q. Mr. Casey,—this may be, your Honor, a question on direct examination, I am not sure—before the gridiron was built, was there a platform there?

Mr. BAYLESS.—Object to that as leading.

The COURT.—Yes, that is leading.

Q. (By Mr. GUNNISON.) What do you say as to whether or not there was any structure there before the present gridiron was constructed?

Mr. BAYLESS.—Object to that as suggestive and as answering the same purpose as the prior question.

(Testimony of W. W. Casey.)

The COURT.—I don't see how else he would ask it. "What do you say as to whether or not there was anything there?" How would you ask the question?

Mr. BAYLESS.—Ask him if there was anything on the beach before the gridiron was put in.

The COURT.—That is what he has asked him.

A. I don't know.

Q. (By Mr. GUNNISON.) Now was there—I think you said in answer to one of Mr. Bayless' questions that part of the old Murray and Carroll structures was used for people to live in, did you?

A. Yes, sir.

Q. About what time was that?

A. Oh, I should suppose ten years ago.

Q. And the boats you say you saw tied up at or near the wharf, what kind of boats were they?

A. Oh, some row boat or some little gasoline boat, something of that kind.

Q. Now, you say that you hauled timbers to the Perseverance Mill; where did you get them, at this same place? A. Yes, sir.

Q. The same slip? A. Yes, sir.

Q. And how many years did you say you hauled lumber for the Perseverance?

A. Oh, two or three; I think I worked for them about three years for a monthly salary, and I think I hauled lumber all the time off and on, occasionally.

Q. Now, what do you say as to whether or not the timber which you hauled was delivered there by Mr. James' scows? A. I do not know.

Q. Do you know the James scow? [197—157]

(Testimony of W. W. Casey.)

A. I used to; I think I do yet.

Q. What is your recollection now as to whether or not those timbers or the lumber which you hauled during those years was delivered by Mr. James' scow? A. I couldn't tell now.

Q. But at that time—during the time you were hauling lumber, did you ever see Mr. James on that ground?

A. Oh, yes, we hauled lumber. His scow might be tied to a pile there—and he might pull off one scow and put on another.

Q. And while you were hauling for the Perseverance you were hauling for other places?

A. I was hauling for the Perseverance with Perseverance teams.

Q. You were acting as superintendent of their transportation?

A. I had charge of their teams for two or three years.

Q. And at the same time also hauling for other people? A. Yes, sir.

Q. And while hauling for other people did you haul lumber from this same slip? A. Yes.

Q. Where did that lumber come from, if you remember?

A. I know James would have his scows there.

Q. All the time you were hauling Mr. James' scows would be in and out when you were hauling lumber? A. Every little while.

Q. In the winter-time, is there any time in the winter—what do you say as to whether or not there

(Testimony of W. W. Casey.)

was any time in the winter when lumber cannot be received there by scows? A. Lots of times.

Q. Well, what would be the reason for that?

A. Bad wind and rough. [198—158]

Q. But so long as there is lumber in the yards it is delivered in the winter as well as summer?

Mr. BAYLESS.—Object to that as leading and argumentative.

The COURT.—Yes, I think you might change the form of that, Judge Gunnison.

Q. (By Mr. GUNNISON.) Is lumber delivered, or have you known of lumber being delivered from the James sawmill at that slip during the winter months in the years between 1901, as I understand you began hauling, and 1913?

A. Why, I couldn't say—I have had it along in November and December, early as March probably. Might have had some in January. I couldn't tell from here.

Q. Do you know the "Alice"? A. Yes, sir.

Q. Do you know whose boat it is?

A. Said to be the mill company's boat.

Q. George E. James Company? A. Yes.

Q. Have you ever seen the "Alice" in there in the winter? A. Yes, I have seen her tied up there.

Q. How many winters?

A. I wouldn't pretend to say.

Q. You have seen her there? A. Yes.

Q. In the winter months. You say you do know the James scows?

A. I know two of them, a small and a large one.

(Testimony of W. W. Casey.)

Q. Did you ever see those scows lay there in the winter? A. Yes.

Q. Have you ever seen the James pile-driver in there? A. Yes. [199—159]

Q. In the winter-time?

A. It was the pile-driver—I have known it as the Webster pile-driver.

Q. And you have seen the pile-driver there?

A. Yes.

Mr. GUNNISON.—That is all.

(Witness excused.) [200—160]

Mr. GUNNISON.—With the permission of the Court, Mr. Robertson will examine Mr. Ross.

The COURT.—Proceed.

[Testimony of Alex. M. Ross, for Defendant.]

ALEX. M. ROSS, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. ROBERTSON.)

Q. Will you state your name and residence to the reporter? A. Alex. M. Ross.

Q. And your residence? A. Douglas Island.

Q. How long did you live in Juneau—or when did you first come to Juneau? A. 1887.

Q. And during what period of time have you resided here?

A. I have been here nearly continuously since that time.

Q. Nearly continuously; how long were you away?

A. I was away nearly two years, the first time.

(Testimony of Alex. M. Ross.)

Q. But how long has it been since your residence was in Juneau?

A. About two years, two or three years.

Q. Do you know the location of what is known as the James gridiron?

Mr. BAYLESS.—Object to that as calling for a conclusion of the witness. The gridiron is not known as the James gridiron.

The COURT.—Objection overruled.

A. I know where it is. [201—161]

Q. (By Mr. ROBERTSON.) And you are familiar with that beach ground there, are you, Mr. Ross?

Mr. BAYLESS.—Object to that as leading.

A. Yes, I know where it is.

Q. (By Mr. ROBERTSON.) Now, Mr. Ross, state to the Court whether or not at any time during your residence in Juneau, you had occasion to frequently pass by or visit this piece of beach ground to which I have just referred?

Mr. BAYLESS.—Object to the question as leading.

The COURT.—Objection overruled.

A. In 1903 I was employed by the J. P. Jorgenson Co., and I remained in their employ until 1908 or 1909.

Q. What work were you doing for the J. P. Jorgenson Co.?

A. Foreman of the sawmill in the summer time.

Q. And where was the sawmill with reference to this piece of beach land? A. Below it.

(Testimony of Alex. M. Ross.)

Q. That is below from the town?

A. Yes, towards the City Dock.

Q. In going to your work at the sawmill, did you pass by this piece of land? A. I did, yes.

Q. And how frequently?

A. About four times a day, I think, except Sundays.

Q. Now, Mr. Ross, did you ever see anyone making any use of this piece of land at that time, 1903?

A. No, it was vacant ground at that time.

Q. When do you first recall definitely having seen some one making use of this particular piece of land?

A. Oh, 1905 or 1906, I should judge.

Q. And who did you see using it at that time?

A. I saw them landing scows there.

Q. Whose scows were being landed there?

A. I judged they belonged to the George E. James Co. [202—162]

Q. Was that the James scow you saw being landed there?

A. Well, I didn't go over and inquire and there was no name on the scow, but the lumber was spruce lumber and was hauled up town and we knew who it was hauled to and I was sure of it as a man could be without following the lumber over there and over here.

Q. At that time, how frequently did you see that land used for that purpose by Mr. James and during what term of years?

A. Mostly in the summer-time, but I couldn't tell you how many times.

(Testimony of Alex. M. Ross.)

Q. Well, for how long a term of years?

A. Well, all of two years, maybe three, up to the present time. That is, from 1905 or 1906 to the present time.

Q. Up to the time you discontinued your residence in Juneau?

A. Well, I have been with the George E. James Co. since and I know they have been using the gridiron.

Q. And on this side—you were on this side to 1908 or 1909? A. Yes.

Q. Did you see anybody else using that piece of land at that time? A. I did not.

Mr. BAYLESS.—What date was that?

Mr. ROBERTSON.—During the period from 1905 to 1908 or 1909. I intend to ask him what use was made of it at that time—of the wharf.

A. (By the WITNESS.) Well, it was either a herring factory or a glove factory just at that time. There was a herring factory there first, and that was abandoned and there was a glove factory started there afterwards.

Q. (By Mr. ROBERTSON.) What year was the road built—completed to the Jorgenson sawmill? [203—163] A. In 1905 or 1906.

Q. This gridiron I referred to—was that built prior to or after the time this road was completed down to the Jorgenson sawmill, to the best of your recollection? A. Before.

Q. The gridiron was built before?

A. Before the road was finished.

Q. Did you, or did you not, see Mr. James bring-

(Testimony of Alex. M. Ross.)

ing in lumber to that gridiron prior to the building of the road down there, the plank road?

A. Well, I couldn't say that I did. I saw lumber there, but I didn't see him bring it there.

Q. You saw lumber there? A. Yes.

Q. Whose lumber was it? A. Spruce lumber.

Q. Whose scow was it?

A. Well, there was no marks on the scow, no name. We supposed it was for the Perseverance and from the James sawmill.

Q. And before the gridiron was built, did you, or did you not, ever see lumber being brought in over that piece of beach land by the James scow?

A. Before the gridiron was built?

Q. Yes, sir. A. I don't remember.

Q. Now, during that period from 1903 to 1908 or 1909, did you, or did you not, ever see any use being made of this particular piece of beach line where the James gridiron is now located, by the Pacific Coast Co.? A. No, sir. [204—164]

Q. During that period from 1903 to 1908 or 1909, Mr. Ross, did you see any sea-going craft or vessels tied up or moored or landed at that Carroll-Murray wharf? A. From 1903 to 1907?

Q. From 1903 to 1908 or 1909.

A. No, not to the outside, but right alongside, right close up to the street there was quite a number of boats—

Q. On the town side? A. Yes.

Q. What kind of boats were they?

A. Fishing boats, I should judge.

(Testimony of Alex. M. Ross.)

Q. You mean by that, gas-boats, schooners—

A. Yes, gas-boats, and I believe there was one or two had a line to the dock.

Q. Did you at that time see any boats landed on the other side, or tied on the other side of the dock?

A. Oh, no, the dock was down at that time; my recollection is the old wharf was down, only right up on the beach right close up.

Q. On this beach, on this side of the wharf?

A. Yes.

Q. But not moored to the dock itself? A. No.

Q. Did you see any of them tied up on the other side? A. I don't remember.

Mr. ROBERTSON.—That is all.

Cross-examination.

(By Mr. BAYLESS.)

Q. Do you know how much of the beach Mr. James occupied before [205—165] the gridiron was built? A. No, I do not.

Q. Do you know where Mr. James landed his scows before the gridiron was built? A. No, I do not.

Q. Was it in the same place the gridiron is now?

A. I couldn't tell you; I don't know.

Q. Did you ever see any boundaries or stakes that would indicate the extent of the ground claimed by Mr. James where that gridiron is now? A. No.

Q. Did you ever see any one else using the gridiron besides Mr. James?

A. I don't remember anybody else using it.

Q. Where were you when the Perseverance Mill was being built?

(Testimony of Alex. M. Ross.)

A. I was with the J. P. Jorgenson Co.

Q. At the sawmill? A. Yes, foreman.

Q. Did you ever see any mill timbers landed on this gridiron for the Perseverance Company?

A. I wouldn't say it was mill timbers. There was timbers for the Perseverance.

Q. Big timbers?

A. Well, I do not know how large they were, but there was scow loads of lumber.

Q. Do you know where the lumber came from?

A. I didn't follow the lumber over, but of course we knew it was from the James sawmill.

Q. Do you know whether any came from the Wrangell sawmill?

A. No, it wouldn't come upon that scow.

Q. Did you ever see any other scows than those owned by [206—166] Mr. James there.

A. Not to my recollection, I didn't.

Q. Did you ever see any mill timbers or other lumber from the Wrangell sawmill landed at that gridiron? A. No, I did not.

Q. When did you say you first observed lumber being brought over to this spot by Mr. James?

A. It was about 1904 or 1905; it was after I went down to the sawmill, and I went down in 1903.

Q. Did you see anything doing there in 1903?

A. I couldn't say that.

Q. You don't recollect that?

A. No, I don't know.

Q. Do you know what was done in that respect in 1904?

(Testimony of Alex. M. Ross.)

A. I don't remember much about it until the road was built, only I know they used to drive down before the road was built and load lumber off a scow. That was a small gridiron at that time.

Q. Was that in the same position that this one is in?

A. I wouldn't be sure about that. It was very close.

Q. Did it have any approach to the street at that time?

A. No, there was no street at that time. It was built after that.

Q. In 1905 or 1906? A. I should judge.

Q. You are not sure?

A. I think I walked that beach about two years before the road was built.

Q. Did you ever see any fishing boats or other craft tied up on the beach where this gridiron is built now?

A. Oh, there might have been boats for temporary repairs.

Q. You have seen boats in that vicinity tied up for repairs? [207—167]

A. I would not say they were on that piece of ground, but I have seen in that direction.

Q. Below the old Carroll wharf buildings and where the Young wharf is now?

A. Well, Young's wharf wasn't there at that time, up to Bodie's. Bodie's was the first one there at that time.

Q. You say the beach in front of Chief Johnson's house up to the old wharf building?

(Testimony of Alex. M. Ross.)

A. Oh, there may have been a boat there, I wouldn't be positive.

Q. Have you any clear recollection of having seen any boats there? A. No, I haven't.

Q. Did you ever see anybody using the beach outside of Mr. James at this spot?

A. It seems to me that there was somebody used it for wood—used to bring in rafts of wood occasionally.

Q. Gus Messerschmidt?

A. I don't know who it was. They would bring them in, roll them up, and pile them up on the other side.

Q. Where this gridiron was?

A. Near there, but I don't know just where it was.

Q. Do you know whether or not Mr. James brought any lumber over before the gridiron was built?

A. No, I couldn't tell you.

Q. Do you know whether or not the Pacific Coast Company occupied this particular beach for any purpose?

Mr. ROBERTSON.—Object to that as irrelevant, incompetent, and immaterial, not proper cross-examination, and too indefinite.

The COURT.—If you confine your question to the time he has testified to on direct examination, I think it would be admissible. [208—168]

Q. (By Mr. BAYLESS.) Do you know whether or not the Pacific Coast Company has ever occupied this particular piece of beach during the time you have testified to? A. Not to my knowledge.

(Testimony of Alex. M. Ross.)

Q. But there have been other people occupying it besides Mr. James for various purposes?

A. Well, just temporarily. I wouldn't be positive about that, either—just that particular ground, but I know people have brought rafts of wood from the other side, but that particular ground I couldn't say exactly.

Mr. BAYLESS.—That is all.

Redirect Examination.

(By Mr. ROBERTSON.)

Q. Mr. Ross, how frequently you say anybody would bring wood in there?

A. Only once, that I remember.

Q. And whereabouts did he pile the wood?

A. On the upper side of the road.

Q. On the tide land or upland?

A. Upland, where the tide wouldn't touch them.

Q. You don't remember who that was?

A. No, I don't. It might have been an Indian, but I think I hauled the wood; I was in the teaming business in the early days.

Q. Did I understand you to say, Mr. Ross, that there was at one time a smaller gridiron on this tract of land?

A. Well, it looks to me that it was smaller than it is at the present time.

Q. Do you know whether or not that gridiron, that small gridiron, [209—169] ever was removed or fell down or went out?

A. No, I couldn't tell you. I don't remember that.

(Testimony of Alex. M. Ross.)

Q. And would you say that that was a substantial structure as a gridiron, or would you designate it more as a platform?

Mr. BAYLESS.—Object to that as leading and suggestive.

The COURT.—Yes, I think so, Mr. Robertson.

Q. (By Mr. ROBERTSON.) What would you term that?

The COURT.—Ask him to describe it.

Q. (By Mr. ROBERTSON.) Describe what this smaller structure was, Mr. Ross, if you can.

A. Posts were set in the ground or driven with a pile-driver, I don't remember which, and timbers put across for a scow to land on.

Q. And about the size of it—the surface?

A. Well, I would say between 40 and 50 feet long and 25 or 30 feet wide.

Q. Was that structure made part of the present gridiron on the beach?

A. It is near the same place.

Q. Well, can you state, or can you not, that it is part of the present structure?

A. Yes, I should judge it was.

Q. You think it is? A. Yes.

Q. Do you know whether or not there was a structure on there that was removed?

A. I couldn't tell you that.

Q. You have no knowledge of that?

A. I have no recollection of it.

Mr. ROBERTSON.—That is all.

(Witness excused.) [210—170]

The COURT.—Do you want to put Mr. Swan on in rebuttal beforehand?

Mr. BAYLESS.—Yes, sir.

The COURT.—Will his examination be lengthy?

Mr. BAYLESS.—Not particularly lengthy. I think we can get through with him in about an hour. The boat won't get here until nine o'clock.

The COURT.—I cannot hold a night session unless consented to by both of you.

Mr. GUNNISON.—I prefer not to. I always prefer to please counsel, but I prefer not to hold a night session tonight.

The COURT.—We have not adjourned yet.

Mr. BAYLESS.—We couldn't run to 6 o'clock.

The COURT.—It is possible.

(Whereupon Court took a recess for 10 minutes.)

[211—171]

[Testimony of Louis Lund, for Defendant.]

LOUIS LUND, a witness called and sworn in behalf of the defendants, testified as follows:

Direct Examination.

(By Mr. ROBERTSON.)

Q. Will you state your name and residence to the reporter? A. Louis Lund; Juneau, Alaska.

Q. What business are you engaged in in Juneau?

A. Transfer.

Q. How long have you been engaged in that business in Juneau? A. Since 1895.

Q. Since 1895? A. Yes.

Q. Do you know the James gridiron and that piece of beach land on which it is situated?

(Testimony of Louis Lund.)

A. Yes, I do.

Q. You are acquainted with that piece of land?

A. Yes.

Q. Mr. Lund, have you ever done any—have you ever had occasion or had any transactions with regard to that piece of land in the nature—in the carrying on of your business that you are engaged in in Juneau? A. Yes, I have.

Q. Just state what you have done there—I mean as regards the carrying on of your business and who it was done for?

A. Well, I have been hauling lumber for different parties.

Q. Hauling lumber from—did you ever haul any lumber from that gridiron? A. Yes, I did.

Q. How many years ago was it since you first hauled any lumber from that place? [212—172]

A. Well, I can't think exactly the date without the books.

Q. Do you remember whether or not you have ever hauled any lumber from that place prior to the time the street was completed down as far as the sawmill? A. Yes.

Q. How many years prior to that was it you first hauled lumber from that piece of beach land?

A. I should judge about two years.

Q. And whose lumber was that you were hauling at that time; that is, where did the lumber come from?

A. Well, some went to the Jualpa and later on I hauled some up to the Elks.

(Testimony of Louis Lund.)

Q. Who did you get the lumber from?

A. It come on a scow or a raft.

Q. From where? A. From Douglas.

Q. Whose scow or raft was it?

A. Well, I think it was Mr. James'.

Q. George E. James? A. Yes.

Q. Now, at that time—prior to the time the street was completed down there, how did you get down there to get that lumber?

A. Unloaded it on low tide.

Q. From what?

A. Gridiron—scow or raft, whatever it come on.

Q. Into your wagon? A. Yes.

Q. And then you drove back up town; is that the idea? A. Yes.

Q. During what period of years have you hauled lumber for Mr. James from that piece of tide land; that is, when was the [213—173] last time you hauled any lumber from that gridiron?

A. Well, *some this* summer.

Q. Sometime this summer? A. Yes.

Q. Since two years prior to the time the street was built have you been off and on hauling lumber from that gridiron of Mr. James? A. Yes.

Q. And before the street was built, what kind of a structure was down on that tide land?

A. It was what we call stringers on a post.

Q. When you went down there did you drive your wagon right around the scow to unload?

A. Yes.

Q. Did you ever haul any lumber from that place

(Testimony of Louis Lund.)

except for Mr. James—I mean except James' lumber?

A. I couldn't say that for anybody else's lumber or not.

Q. Whose lumber—you do remember you hauled James' lumber from that place? A. Yes.

Q. At the time, Mr. Lund, you say you commenced to go down there, about two years prior to the time the street was built to the sawmill, what use was being made of the Carroll-Murray wharf at that time, if you remember? A. What was it used for?

Q. Yes. A. I think it was a glove factory.

Q. A glove factory?

A. Yes, and that used to be once a sardine factory.

Q. Did you ever see anybody living there?

A. Yes, I did see some one. [214—174]

Q. At the time when you—during the time you have been hauling lumber from Mr. James' grid-iron, have sea-going vessels been tied up or moored to the Carroll-Murray wharf, vessels the size of the old "Idaho," or "Anchon," or "Topeka"?

A. No, I don't think there was any sea-going vessels since that time.

Q. During that time has it ever been used as a wharf?

A. No, it hasn't been used as a wharf.

Mr. ROBERTSON.—That is all.

Cross-examination.

(By Mr. BAYLESS.)

Q. Mr. Lund, when did you first start hauling lumber from this beach?

(Testimony of Louis Lund.)

A. Well, I worked for other people before. I think I started in '89.

Q. You hauled lumber from the beach in 1889?

A. Yes; used to have raft there at different times.

Q. 1889? A. Yes.

Q. Whose lumber was that?

Mr. ROBERTSON.—We object to that as immaterial and not proper cross-examination. We confined our examination to two years prior to the time the road was built.

The COURT.—Objection overruled.

Q. (By Mr. BAYLESS.) Whose lumber was that, Mr. Lund?

A. That come from Sheep Creek at that time.

Q. Who did you do the hauling for then?

Mr. ROBERTSON.—Object to that as irrelevant, incompetent and immaterial. [215—175]

The COURT.—Objection overruled.

A. Some I hauled for myself and some I hauled for other people. I went down there and got it off the raft myself.

Q. Have you been hauling lumber from that beach since 1889 down to date? A. Yes.

Q. Well, between 1889 and 1900 did you do any hauling of lumber from that beach?

Mr. ROBERTSON.—We object to that as immaterial and not proper cross-examination, and, furthermore, it is indefinite as to what beach he means, whether he is speaking of this particular piece I referred to or not.

Mr. BAYLESS.—I mean now referring to the

(Testimony of Louis Lund.)

beach now claimed by Mr. James.

The COURT.—Objection overruled.

Mr. ROBERTSON.—Exception.

A. Yes, I hauled some. We used that for a garbage dump for some time.

Q. (By Mr. BAYLESS.) Garbage dump?

A. Yes, till they stopped us.

Q. Well, in 1900—from 1900 to 1905 did you haul lumber from that beach?

Mr. ROBERTSON.—Same objection.

The COURT.—I understand when you say “that beach,” you mean the place where this gridiron is?

Mr. BAYLESS.—Is now situated, yes, sir.

The COURT.—Objection overruled.

Mr. ROBERTSON.—Exception.

Q. (By Mr. BAYLESS.) From 1900 down to 1905, did you haul any lumber from the piece of beach land that is now claimed by Mr. James?
[216—176]

A. Well, I think I did sometimes, yes.

Q. Who did you haul for?

A. Well, I hauled quite a lot for James himself. He built a number of houses himself around town that year.

Q. That is, before the gridiron was built?

A. Yes.

Q. Did you do any hauling for Mr. James in 1900?

A. Well, I think I took some lumber up to the schoolhouse; I believe that was the biggest lot of lumber I hauled at one time.

Q. What time in 1900 was that?

(Testimony of Louis Lund.)

A. Well, I should judge about the month of June or July?

Q. How do you happen to recall that?

A. No, I couldn't unless I go back to the books.

Q. Are you sure it was 1900?

A. I don't know; it was somewhere around there.

Q. What did you do in 1901?

A. Well, I was engaged in the same business.

Q. Were you hauling lumber from this portion of the beach? A. Not always, no.

Q. Did you haul any lumber from there?

A. Oh, yes, we did haul some.

Q. Who did you haul from there for?

A. Lots of times hauled lumber to the hospital—

Q. Who hauled that lumber?

A. Well, it mostly come from the Douglas mill.

Q. Did you do any hauling from the Sheep Creek or the Jorgenson sawmills? A. Yes, I did.

Q. And it was landed at that beach? A. Yes.

Q. Was any lumber landed there from Wrangell?

[217—177]

A. No; they had a lumber-yard of their own.

Q. Where? A. Called the Union wharf.

Q. Union wharf?

A. Yes; Behrends and Rudolph owned it at that time.

Q. Do you remember when the Perseverance mill was built? A. Yes.

Q. Did you haul any of those mill timbers for the Perseverance mill? A. Yes.

Q. Where did you get those timbers?

(Testimony of Louis Lund.)

A. On the beach.

Q. What part of the beach?

A. Well, some I got down to James'.

Q. Where Mr. James' gridiron is now?

A. Yes.

Q. Was the gridiron there?

A. It was a small one.

Q. Was it in the same place that the gridiron is now?

A. I think it must have been about the same place.

Q. Is this gridiron the same one that was there when the mill timbers were shipped up here?

A. I don't know for certain. They have been repairing along, right along.

Q. Does it look like the same gridiron repaired?

A. Well, I don't know. It was very low, this first one, and they raised it up and made it higher.

Q. This gridiron is in the same place as the old one?

A. Yes, I think so; it is pretty near the same.

Q. And the Perseverance mill timbers were landed on this gridiron? [218—178]

A. Well, there was some. It was very low.

Q. Where did those mill timbers come from?

A. I do not know.

Q. Do you know whether or not they came from the Wrangell sawmill? A. I couldn't say.

Q. Was there a street there when the mill timbers were being taken up to the mill?

A. No, there was just the beach.

Q. The street hadn't been put in there then?

(Testimony of Louis Lund.)

A. No.

Q. How long after was the street put in?

A. I couldn't say. There was—must have been probably four years after that.

Q. Are you guessing?

A. Well, I am not very certain of it. I know they built that street from where the Union wharf is to Forrest's, to where his shop is now, and it took over another year to get the street to the sawmill—about three years to build that street.

Q. Do you know whether or not during the time you have mentioned the Pacific Coast Co. had supervision of these tide lands involved in this case?

Mr. ROBERTSON.—We ask that the witness answer that yes or no.

Mr. BAYLESS.—I asked him if he knew.

The COURT.—What is that cross-examination of? What was brought out on direct examination that would make that competent cross-examination?

Mr. BAYLESS.—He testified, I believe, that Mr. James was occupying this particular portion of the beach. I want to find out if the Pacific Coast Co. used it.

The COURT.—I don't remember any testimony to [219—179] the effect that Mr. James occupied it.

Mr. BAYLESS.—By his gridiron?

The COURT.—Testimony from this witness?

Mr. BAYLESS.—Yes. He testified that he hauled lumber from that gridiron; that lumber was brought over by Mr. James.

(Testimony of Louis Lund.)

The COURT.—Brought over by Mr. James?

Mr. BAYLESS.—I mean the lumber was brought over from his sawmill.

The COURT.—That wouldn't make competent a question as to whether or not the Pacific Coast Co. ever exercised supervision over it. Objection sustained.

Q. (By Mr. BAYLESS.) Do you know whether or not Mr. James built that gridiron?

A. Well, I see him around there a whole lot when it was built.

Q. Did you see him working on it? A. Yes.

Q. Did you see him working on the old gridiron, the one that was there first?

A. I don't know whether I did or not, but I see them—

Q. How long after the first structure was put on there was the present structure erected?

A. I don't know; I think it was.

Q. Well, was the old structure just an improvement or repaired?

A. They raised it up higher.

Q. It was the same gridiron raised up higher?

A. No, I think it must have been put in new timber.

Q. New timber?

A. New timber and longer posts.

Q. Was it in the same position as the old gridiron?

A. Yes, in the same lay-out, facing the same way.

Q. How big was that old gridiron? [220—180]

(Testimony of Louis Lund.)

A. I think it was very small.

Q. How big?

A. Well, I should think it was about 40 feet long.

Q. How wide? A. Might be 20 or 25.

Q. Now, was all the lumber Mr. James handled down there put on the gridiron, or was it landed at various places along that beach near where the gridiron is now?

A. Well, I do not know. We used to have a place to drive in between the gridiron and the scow and unload from the scow at the same time.

Q. Where did the scow sit?

A. On the front of it.

Q. On the front of the gridiron? A. Yes.

Q. Then the scow wouldn't occupy the whole gridiron?

A. Well, I guess it did on that side. There was kind of two places, one for the scow and one for the timber.

Q. And you loaded timber direct on the wagon?

A. Yes, from the scow and from the upper gridiron. I know I tied it on with a rope sometimes—it was floating on the upper one.

Q. Did you ever see any timber landed on the beach near where the gridiron was?

A. Well, I sometimes did.

Q. When?

A. Oh, at various times; sometimes it floated out. At times when the scow would be up at one corner hanging on the foundation and one end on the beach.

Q. You didn't see Mr. James building that grid-

(Testimony of Louis Lund.)

iron—the first one? [221—181]

A. No, I did not see him.

Mr. BAYLESS.—That is all.

Redirect Examination.

(By Mr. ROBERTSON.)

Q. Mr. Lund, do you mean that they used to land lumber there from the Sheep Creek sawmill at the same place where Mr. James' gridiron is now?

A. Yes, they landed anywhere they could get a smooth place to land on.

Q. I know, but with reference to all this hauling—do you mean that this was done from this same part of the beach where Mr. James' present gridiron is, or do you mean it was different portions of the beach?

A. It was smother there than it was farther down where Young's wharf is. Young's wharf is more rocky.

Q. The beach had been cleaned off there?

A. Yes.

Q. Who was operating the Sheep Creek sawmill at the time when lumber came up from there?

A. Alex, I think they called him. He was there at one time.

Q. Was that just before the Douglas sawmill was started?

A. I think Mr. James ran it at one time after Alex.

Recross-examination.

(By Mr. BAYLESS.)

Q. Did you ever see any stakes near that grid-

(Testimony of Louis Lund.)

iron to indicate the boundaries of any claims that Mr. James might have?

Mr. ROBERTSON.—We object to that as not proper recross-examination. [222—182]

Mr. BAYLESS.—It probably isn't, if the Court please—I forgot it.

The COURT.—Objection sustained.

Mr. BAYLESS.—I would like to have the privilege of asking him that question again on cross-examination.

The COURT.—You can ask him that question if you want to make him your own witness, but it is not competent on cross-examination.

Mr. BAYLESS.—That is all.

(Witness excused.) [223—183]

Mr. GUNNISON.—Now, if it please your Honor, we are ready to take up Mr. Webster's testimony and it is twenty-five minutes to four. I anticipate that Mr. Webster's direct examination and cross-examination will take at least to five o'clock and probably later, and if they want to examine Mr. Swan, I have no objection to it, but I don't want to be interrupted in the examination of Mr. Webster.

The COURT.—Very well, do you wish to examine Mr. Swan out of his turn? Probably now would be the best time to do it.

Mr. BAYLESS.—If the Court please, there isn't a great deal for Mr. Swan to rebut at this time and I would very much prefer to put him on after Mr. Webster and I will do my best to get through with him and I think we can before five o'clock. I don't

(Testimony of Louis Lund.)

think it will take me very long to cross-examine Mr. Webster.

The COURT.—The situation is just this: If you should wait till after Mr. Webster is through to put Mr. Swan on and then Mr. Swan's testimony, direct testimony, should be so long that the cross-examination would run over say six o'clock, what are you going to do?

Mr. BAYLESS.—If the Court please, in that event I think we would be entitled to have a night session.

The COURT.—Yes, but this is a holiday and I cannot have a night session unless both counsel are willing.

Mr. BAYLESS.—Yes, sir, I want to call your attention to the fact that I think it would be an indication of good sportmanship on Judge Gunnison's part if he would have that night session.

The COURT.—Very well. You and Judge Gunnison decide among yourselves whether you want to be good sports, or bad sports, or lawyers. [224—184]

Mr. BAYLESS.—I am not ready to put Mr. Swan on now.

The COURT.—I will allow you to put Mr. Swan on the witness-stand now in order to get through with him, but if you don't want to, he will have to come on when his turn comes.

Mr. BAYLESS.—Will your Honor allow me to put Mr. Swan on after Mr. Webster's direct examination?

The COURT.—Yes.

(Testimony of Louis Lund.)

Mr. BAYLESS.—I will do that.

Mr. GUNNISON.—In the event that Mr. Swan's testimony—it is quite possible that Mr. Bayless' direct examination might not take very long, but the cross-examination might take considerable time—I haven't any objection to putting him on after Mr. Webster's direct examination if he wants to, but I do not want to be precluded from a complete and full cross-examination of Mr. Swan. I understand that your Honor wouldn't do that, but I don't want to stand silent and have counsel think that I would consent to hurry the cross-examination to oblige him, as much as I would like to do it.

The COURT.—Mr. Bayless is taking the risk himself. Of course, when a witness gets on the stand, the other side is entitled to finish with him and if the other side is not finished with Mr. Swan by the time the Court has to adjourn, why then Mr. Swan will have to stay over. If he has finished, of course that is the end of it. I am not trying the case, but I cannot see how the direct testimony of Mr. Webster on a matter of this kind and the testimony of Mr. Swan could possibly take more time than to 6 o'clock.

Mr. GUNNISON.—I don't know as it would, but there are chances of it and I don't want to be in a position where counsel can say I am trying to take advantage of it. [225—185]

[Testimony of Edward Webster, for Defendant.]

EDWARD WEBSTER, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. GUNNISON.)

Q. Mr. Webster, you have already been sworn in this case, I think? A. Yes, sir.

Q. Now, Mr. Webster, when was it you first started in the pile-driving business?

A. Well, I started in in 1886.

Q. Were you in that business from 1900 to the present time, or to 1913, the summer of 1913?

A. Yes, sir.

Q. You know George E. James? A. Yes, sir.

Q. And you have testified on your examination as a witness for the plaintiff that you knew the piece of ground in controversy? A. Yes, sir.

Q. That is, the place where the James gridiron now stands on the beach on the sea side, or bay side, of Franklin Street below the Murray and Carroll wharf, the site of the old Carroll-Murray wharf?

A. Yes, sir.

Q. Now, in the year 1900 was the old Murray and Carroll wharf—to what use was that put at that time, in the year 1900?

A. Well, I do not know—you mean the wharf or the warehouse?

Q. I mean the wharf and the buildings on it.

A. Why, I don't know on that date just what use it was put to.

Q. Was it used as a landing place for vessels?

(Testimony of Edward Webster.)

A. No, sir. [226—186]

Q. To what use, if any, was the piece of land in controversy put in the year 1900?

A. Not any that I know.

Q. Do you know what George E. James' occupation was in 1900?

Mr. BAYLESS.—Just a minute. I object to that as being leading, calling for a conclusion and incompetent. There is no testimony that Mr. James has ever been in occupation.

Mr. GUNNISON.—Well, I will withdraw that.

Q. What was his business at that time?

A. Sawmill man.

Q. Where was he engaged in the sawmill business, if you remember?

A. Why, he was engaged at Douglas.

Q. In 1900. You think he was in Douglas in 1900. Now, do you know whether or not George E. James delivered any lumber in Juneau that year?

A. No, I do not.

Q. When was the first time you know of Mr. James delivering lumber in Juneau?

A. Well, in fact I know he has delivered lumber, but I have no dates to fix the time or anything like that.

Q. Well, approximately; fix it with reference to the construction of any building, if you are able to do that.

A. No, I don't know his business in delivering lumber—I know he has been delivering lumber there for years.

(Testimony of Edward Webster.)

Q. How long back has he been delivering lumber at that point?

A. Well, since 1904 that I know of.

Q. Now, in 1904 you say that Mr. James delivered lumber at that place in controversy? A. Yes, sir.

Q. Now, at that time, 1904, was there any structure on that piece of ground of any kind?

A. Not to my knowledge. [227—187]

Q. What did you do with reference to that ground in the year 1904, Mr. Webster?

A. Well, I went over to drive two piles for Mr. James to tie his scows and lumber up to.

Q. Where did you drive those—do you remember where on the ground?

A. Just along—there was a big rock used to sit there and we drove them out so a team could pass between the rock and where the two piles was, to leave it free.

Q. How were they driven?

A. Driven with a pile-driver.

Q. I know; I don't mean the mechanical device but what— A. Positions?

Q. Positions, that is it.

A. Say one east and one west.

Q. Of what? A. Of each side.

Q. Each side of what?

A. Say one stood—say I drove the west one first, then I drove this one east and— (indicating)

Q. Where on the ground did you drive them?

A. I don't know just exactly the position of the ground.

(Testimony of Edward Webster.)

Q. With reference to the Chief Johnson house and the ground now covered by the Young Dock.

A. Driven right in the C. W. Young Company's line—we took that line from—what we call C. W. Young Company's property.

Q. Were they driven in a line offshore, that is, running at right angles with the beach?

A. Well, they are driven up and down.

Q. Up and down from the shore? A. Yes, sir.
[228—188]

Q. I hand you a map which is already marked Defendant's Exhibit "A," received in evidence August 20, 1913,—this is a map which was offered in the preliminary hearing—and I will ask you if you can tell me what that represents in a general way?

A. It is supposed to represent the street here and the incline and the gridiron.

Q. The gridiron in controversy? A. Yes, sir.

Q. Now, will you take a pencil and mark on that, if you are able to, the point at which you drove, or the points at which you drove these two piles? Mark them "P."

A. (Witness indicates position on map with pencil marks.)

Q. Those are the points at which the—the points marked "P" in pencil are the points at which you drove those two piles? A. Yes.

Q. Is that a fairly correct representation of the location of the present gridiron and the approaches?

A. I couldn't say that from the picture it would be.

(Testimony of Edward Webster.)

Q. I say fairly correct?

A. Yes; the drawing is about the same as the shape.

Q. And the relative position between the street and the gridiron as it appears on here is about correct? A. Yes.

Mr. GUNNISON.—We offer that in evidence, your Honor, for the purpose of illustrating the testimony of the witnesses.

Mr. BAYLESS.—I have no objection.

(Admitted in evidence and marked “Defendant’s Ex. A.”)

Q. (By Mr. GUNNISON.) Now, Mr. Webster, when you put in those two piles, was there anything else on this ground in controversy?

A. No, not that I know of.

Q. Who paid you to put in those piles?

A. Mr. James. [229—189]

Q. And they were driven in the line between the Young—the ground that is now covered by the Young Dock? A. Yes, sir.

Q. And the ground now occupied by the gridiron, the James gridiron? A. Yes.

Q. Now, was Mr. James—do you know whether or not Mr. James was using this piece of beach at that time? A. Yes.

Q. For the purpose of—for any purpose?

A. Yes, he was using it for landing his scows and lumber.

Q. What time in the year did you drive those piles?

(Testimony of Edward Webster.)

A. If I remember right, it was along in the summer some time; just the month I don't remember.

Q. Are you able to say whether or not the beach had been cleared in any way at that point?

A. No, I couldn't say positively.

Q. You are not able to say positively? A. No.

Q. Now, do you know whether or not Mr. James had used that beach prior to that time for any purpose? A. No, I do not.

Q. Of your personal knowledge you do not know?

A. No.

Q. Now, do you know how often he used it in the year 1904 for the purpose which you have stated?

A. No, I couldn't say.

Q. How was it used by Mr. James in the way of landing lumber? Just describe the method used.

A. Well, used in landing scows and landing rafts there.

Q. And they were hauled away by wagons?

A. Yes, I suppose they were. [230—190]

Q. Did you ever see any scow in there that year?

A. No, I can't say I did.

Q. Did you ever see any lumber hauled away from there?

A. Well, I could say I had, but not the time.

Q. That was a long time ago and I suppose your memory isn't very fresh on it.

A. No, it isn't.

Q. Now, do you know whether Mr. James used that in the year 1905, that ground?

A. Yes, he was landing there in 1905.

(Testimony of Edward Webster.)

Q. Now, did you build anything for Mr. James there in the year 1905? A. No, sir.

Q. Did you do any work there at all in 1905?

A. No, not for Mr. James.

Q. Did you for anyone? A. Yes, sir.

Q. What did you do?

A. Drove some piles for Mr. Scott there.

Q. Do you remember how many?

A. If I remember right it was just two.

Q. Where?

A. They had a platform there, iron platform, set up and had it capped off and then had a low one here (indicating) in front of it and I drove a couple piles to tie the scow to.

Q. Now, where with reference to the street as it now stands and the gridiron of Mr. James and the approaches to that gridiron, did this platform stand?

A. Well, it stood—just how far I couldn't tell, because the street wasn't planked then. I should say it was twenty feet down below the street—20 or 30 feet. [231—191]

Q. When you say it was 20 or 30 feet below—I will withdraw that—what was the size of that platform, as you remember it?

A. Well, now, just the size of it I don't remember. I think it must have been 30 or 40 feet long anyway.

Q. Did that parallel the beach or run at right angles to the beach, that 40 feet?

A. Paralleled the beach.

Q. How wide was it?

A. Well, just the width of that one I don't know,

(Testimony of Edward Webster.)

because I went in there on high tide and drove it and I think I drove these piles about 20 or 30 feet apart for him.

Q. Did you drive those piles next to the platform itself or next to this other arrangement?

A. They had a high platform set up there and timbers bedded down there to raise the scow on.

Q. Which side? A. That side. (Indicating.)

Q. At one end of it?

A. At the bay side. They had some timbers up here (indicating) to lower their stuff off on their platform to raise the scow on the garnet.

Q. Where did you drive the piles, on the outside of those timbers bedded down, or next to the platform itself? A. Next to the platform.

Q. So that you drove a rod over? A. Yes.

Q. And you drove one at each end?

A. Yes, I should say about 30 feet apart.

Q. And they didn't quite go to the end? A. No.

Q. Now, how wide was that platform? [232—192]

A. That I don't know, because the tide was in.

Q. Over the whole platform?

A. This platform. I think it was something like 12 or 14 feet wide.

Q. And about 30 feet long? A. Yes.

Q. Where did that stand with reference to the present gridiron—was it between the site of the present gridiron and the line of high tide, or was it in a position that was coincident with it?

A. No, I would say it was further to the west.

(Testimony of Edward Webster.)

Q. By west you mean this way, towards town?

A. Yes.

Q. How much farther?

A. That I couldn't just exactly say, because I didn't have occasion to visit it afterwards.

The COURT.—Are you basing any claim on the platform?

Mr. GUNNISON.—No.

The COURT.—Well, let us get to the gridiron.

Mr. GUNNISON.—Well, I am trying to get the relative positions; there were other structures on there and I want to get its position as to where the gridiron was afterwards placed, your Honor.

The COURT.—It seems to me that you are taking up a great deal of time on something that isn't in controversy.

Mr. GUNNISON.—It may be that I am anticipating something, but I think it will show its relevancy later when other testimony comes in with reference to the use of that and other structures built on that ground.

Q. Are you able to mark on this map the place where that platform [233—193] was built or where you drove the piles? I don't want you to do it if you are not able to do it with reasonable accuracy.

A. I can't say that I am, because the position of it I don't know. The tide was over it when I was there.

Q. You think you drove two piles in the face of that? A. Yes.

(Testimony of Edward Webster.)

Q. Who was building it? A. Mr. Scott.

Q. Now, how well did that platform stand, if you know?

A. I know it was out the next year, in 1906.

Q. How do you know that?

A. I went in to drive the gridiron for Mr. James.

Q. Do you know whether or not Mr. James used that piece of tide land for any purpose during the year 1905 and while that so-called platform was standing on the beach?

A. Yes, I know that Mr. James had a small gridiron of his own, that is, some timbers bedded in there.

Q. Where was that with reference to the platform in front of which you drove the two piles?

A. No, sir, to the other side, to the east.

Q. Was it parallel to the shore line or at right angles with it? A. Well, it was up and down.

Q. From inshore out? A. Yes.

Q. How wide was it?

A. It was about 14 feet wide.

Q. And about how long?

A. I would say 20 or 30 feet.

Q. When a scow was landed upon that—I will withdraw that question—what was it used for?

[234—194] A. To land his scows on.

Q. Did you ever see any scows landed there during the year 1905? A. I can't say that I did.

Q. Were there any stakes there when you drove those piles?

A. No, there were no piles there then.

Q. No stakes of any kind? A. No.

(Testimony of Edward Webster.)

Q. Then in 1905 you say you went on there for the purpose of driving a gridiron? A. 1906.

Q. 1906, I mean. What time in 1906?

A. Well, it was along in the fall sometime, I think.

Q. In the fall of 1906?

A. No, in the spring of 1906.

Q. Was there any structure—what, if anything, had become of the platform which you say you saw upon that ground the preceding year—I mean the platform in front of which you drove the two piles and which was being constructed by Scott?

A. In the fall of 1905 that all went out. There was nothing there only a little platform that Mr. James had up and down there.

Q. That is the platform you testified to and which Mr. James used in 1905 while the platform was there? A. Yes, sir.

Q. Was there any of that platform left in the spring of 1906 when you went in to drive the James gridiron?

A. No, sir, it had all been hauled away.

Q. Where did you drive Mr. James' gridiron with reference to the platform—I will withdraw that question—Are you able to mark on this plat, Defendant's Exhibit "A," July 18, 1914, [235—195] the approximate position of the gridiron, or the James platform that was on there in 1905?

The COURT.—Mark that with a "G," the approximate position of the gridiron in 1905.

A. It laid right along in this position here; laid right along in there. (Witness marks exhibit.)

(Testimony of Edward Webster.)

Q. (By Mr. GUNNISON.) That is, it lay just to the westward of the two piles that you had driven for Mr. James sometime in the year 1904?

A. Yes, sir.

Q. Now, what did you do in the year 1906 with reference to that piece of tide land?

A. Well, I went in there and built a gridiron on it for Mr. James.

Q. Describe what you built.

A. Well, I built a gridiron that is somewhere about 80 feet by 24—the caps are 24 feet long—and I drove the gridiron, cut it and capped it, and we built a little platform—

Q. Inshore?

A. Inshore from where the present street is now. We had it upshore.

Q. Toward the present street?

A. Above the gridiron.

Q. Between the gridiron and the street?

A. Yes, sir.

Q. How did that 80 feet run, parallel—same direction as the street? A. Parallel with the beach.

Q. And how far from those two piles which you drove in 1904 did you drive the easterly, or down-channel end of that gridiron?

A. Well, it is about eight or ten feet from it this way. That is where the gridiron starts. [236—196]

Q. The gridiron starts about eight or ten feet from those two piles? A. Yes, sir.

Q. And it extends eighty feet? A. Westerly.

(Testimony of Edward Webster.)

Q. Toward town? A. That is, toward town.

Q. You say it is 20 feet wide?

A. Twenty-four—the caps are all 24 feet.

Q. Was that decked over? A. No, only caps.

Q. How did the bents run?

A. Up and down the beach.

Q. What was the purpose of that gridiron?

A. To land scows and lumber on.

Q. How were they landed on it—how were scows landed on it?

A. Well, on high tide they were floated on there.

Q. And allowed to settle when the tide would go out? A. Yes.

Q. And its purpose was to keep the scows on an even keel? A. Yes, sir.

Q. So that they might safely discharge and handle them. Now, where was that platform built?

A. Well, they set up some piles and set up a platform so they could unload off the scows onto this platform when the tide was out. There was no way down to it then.

Q. At that time lower Franklin Street had not been built? A. No.

Q. How was that place approached by wagons?

A. From the beach side, just on the beach.

Q. Was this platform which you built on a level with the gridiron [237—197] or—

A. Higher.

Q. Why higher?

A. So you could unload it and the tide wouldn't float it off.

(Testimony of Edward Webster.)

Q. What was the general character of that platform as to its being substantial?

A. No, it was just set up, wasn't substantial.

Q. What was the size of the timbers that were used in it?

A. Well, they were ten by twelves capped.

Q. How many piles did you put in it?

A. I think there were four in each bent.

Q. And how many bents?

A. I think it was something like twenty or thirty feet long.

Q. Bents about eight feet long?

A. About ten feet.

Mr. BAYLESS.—Q. How wide?

A. About fourteen or sixteen feet or so.

Q. (By Mr. GUNNISON.) And they went nearly the length of the gridiron?

A. Not quite the length.

Q. Now, when a scow sat on that gridiron would it project—I will withdraw that—Who paid you for that construction work?

A. Mr. James; I charged it to the James Sawmill Company.

Q. Now, do you know who used that gridiron that you constructed? A. Mr. James was using it.

Q. Using it how; in what manner was he using it?

A. Unloading his scows and sometimes putting lumber on there that was rafted.

Q. That was in 1905? A. No, sir.

Q. 1906? A. Yes, sir. [238—198]

Q. At that time was that piece of beach used by

(Testimony of Edward Webster.)

any other person so far as you know?

A. Not that I know of in 1906.

Q. When was the road—Franklin Street—completed down there?

A. They started it in September, 1906, and they finished it sometime in November to the Jorgenson sawmill—worked September, October, and part of November.

Q. Did you construct part of that?

A. No, sir, I did not.

Q. But you know when it was done? A. Yes.

Q. Now, did you build anything else for Mr. James on that ground?

A. In 1907 I put in the roadway from the west side.

Q. That is the side towards town?

The COURT.—West side of what?

A. Of the gridiron.

Q. (By Mr. GUNNISON.) Will you describe that and how you built it?

A. Well, I went in with the pile-driver and drove piles and cut them on an incline—drove right straight through in back of the gridiron and that was put on caps and joints and we planked it.

Q. Decked it—planked it? A. Yes, sir.

Q. The purpose of that was what?

Mr. BAYLESS.—Object to that as incompetent.

Mr. GUNNISON.—I assume, your Honor, that anything would be competent that would show the use and purpose for which any structure was built on there, provided we eventually show it was used for that purpose.

(Testimony of Edward Webster.)

The COURT.—I think so. I think you may show what Mr. James used in connection with his gridiron. I think it is competent. The objection Mr. Bayless is insisting on is [239—199] your asking “what purpose.” You had better put the question in another form.

Q. (By Mr. GUNNISON.) What was it used for?

A. Used for an approach to and from the gridiron.

Q. For teams? A. Teams, yes, sir.

Q. And wagons—used for wagons? A. Yes, sir.

Q. Now, is that approach still there?

A. Yes, sir.

Q. And did you see Mr. James—do you know of Mr. James having used that gridiron, platform, and approach in the year 1906?

A. Yes, sir, I know that he had.

Q. And how did he use it?

A. With lumber and scows.

Q. Landing scows and discharging them?

A. Yes, sir.

Q. And was that approach used?

A. The approach wasn't built until 1907.

Q. I mean in 1907; did you say they used it?

A. Yes, sir.

Q. And in what way—in the way you have just testified? A. Yes, sir.

Q. When you built that gridiron in 1906, Mr. Webster, where did you get the material with which to build it?

(Testimony of Edward Webster.)

A. Mr. James furnished it from the mill and brought it over.

Q. Was there any part of the old platform in front of which you drove two piles in the year 1905 used in the construction of this gridiron?

A. No, sir, there wasn't a thing of it left, everything had gone. [240—200]

Q. Where did this gridiron stand with reference to where that platform stood?

A. A little further up the shore and further to the east than the platform that they put in.

Q. Now, where does it stand—where does the approach which you constructed in 1907 stand with reference to that old platform in front of which you drove the two piles?

A. It is quite a ways from that and to the west of it.

Q. Now, is there anything else on that ground at the present time—on that beach I mean—any other structure that is connected with the platform or gridiron?

A. Yes, there is an approach to the east—put in in 1912.

Q. And who put that in? A. Mr. James.

Q. Where does that reach or touch Franklin Street?

A. It touches right across from there on part of the C. W. Young Company's wharf.

Q. Part of that approach goes over the C. W. Young's Dock? A. Yes, sir.

Q. Now, Mr. Webster, from the point where that

(Testimony of Edward Webster.)

approach enters the C. W. Young Dock to the point where the westerly approach reaches Franklin Street, what is the distance between those two points, if you are able to say?

A. I couldn't just say that. I never measured it. I did measure it there one day for some caps to put on for Young's, but I don't remember what they were now. It don't go clear over—it goes I should say about fourteen feet.

Q. I am asking how much ground is occupied by the structures of Mr. James westerly from the line of C. W. Young's.

A. Well, now, I should say it was thirty feet or something on the C. W. Young Company's— [241—201]

Q. I don't make myself understood. You say the easterly approach was partially on this piece in controversy and partly on the land, the tide lands of the C. W. Young Co.? A. Yes.

Q. Now, you say there are about thirty feet on Mr. Young's ground?

A. No, there may be more than that.

Q. What I am trying to get at is, how much of the tide lands claimed by Mr. James are covered by these structures which you have erected for Mr. James on the tide flats?

A. Well, the approach starts about ten feet from Young's and starts up the incline.

Q. And there are about ten feet of approach on the easterly end? A. Yes.

Q. Then you said the gridiron was about 80 feet?

(Testimony of Edward Webster.)

A. Somewhere along in that neighborhood.

Q. How long was the westerly approach?

A. That I don't remember; I think there was four or five bents in that.

Q. And that ran at an angle—joined Franklin Street at an acute angle? A. Yes.

Q. Now, do you know whether or not Mr. James used that gridiron and platform in 1908 and the approaches?

A. Oh, I am quite positive—I have used it a good deal in the winter time for my pile-driver.

Q. From whom did you get your permission?

A. I didn't get any permission. I just used it because it was a company affair.

Q. What do you mean by a company affair?

A. Mr. James and I own the pile-driver.

Q. Then you didn't apply to the Pacific Coast Co. for permission [242—202] to use it?

A. No; I had a permit from the Pacific Coast Co. for a gridiron below there.

Q. Down below?

A. Yes, alongside the soda works.

Q. But you didn't apply to the Pacific Coast Co. for permission to use this ground? A. No.

The COURT.—Which ground was that?

A. Way this side; Mr. Swan gave me permission to build a gridiron right alongside where the soda works is there.

Q. (By Mr. GUNNISON.) You mean to the town side?

A. Right at the end of the 600 feet this way.

(Testimony of Edward Webster.)

Q. That is, next to where the old Alaska Steamship Company's Dock was? A. Yes, right there.

Q. What do you say as to whether or not the tract in controversy has been used by Mr. James from that time until the present?

A. Well, I would see he was using it quite often during that time.

Q. What do you say as to whether or not it has been used in the winter time for any purpose during those years? A. Yes, it has been used.

Q. How was it used?

A. Well, the last two winters I have laid the pile-driver on it.

Q. Well, beginning with the winters prior to that?

A. In 1910 I laid the pile-driver there.

Q. Have you ever seen Mr. James' scows laid up there in the winter?

A. Yes. He had one scow pretty near the whole winter.

Q. How about the winters of 1910-11, 1911-12, 1912-13?

A. Yes, 1911, had the pile-driver on all winter.

Q. Now, what do you say as to whether or not—or as to what the [243—203] result would be of the construction of a wharf for the purpose of landing sea-going vessels across the deep water end of this tract in controversy, with reference to the value of this property and the utility for the purposes for which it is now used?

A. As to the value I couldn't say, but it would certainly cut out deep water access.

Q. I mean would it be of any use for the purposes

(Testimony of Edward Webster.)

for which it is now used if a wharf were built across it? A. No—couldn't use the gridiron.

Q. (By the COURT.) It would depend upon how far the wharf was from the gridiron?

A. Yes, but you couldn't get in from deep water with scows.

Q. Suppose the distance from the face of the wharf to the scow is a hundred feet or two hundred feet and the water was ten feet deep, couldn't you get in?

A. Yes, but if that butted up to the 600 feet, that would be a shut-off on both sides. You couldn't get a scow through to the gridiron.

The COURT.—That is something you haven't shown by the testimony, that the other end is not in the open.

Mr. GUNNISON.—I thought we had shown that it abutted on the C. W. Young Dock.

Q. (By Mr. GUNNISON.) What lies immediately east of the tract of ground upon which this gridiron stands? A. The C. W. Young float.

Q. And wharf? A. Yes, sir.

Q. Now, how far does that extend, Mr. Webster?

A. Well, just the distance out I don't remember; it is about out to deep water though. [244—204]

Q. What is the depth of water at low tide there?

A. I think there is 21 feet.

Q. At the face of the Young Dock? A. Yes.

Q. And how close do the bents of the Young Dock stand together? A. They are ten feet.

Q. Ten-foot center? A. Yes, sir.

Q. If a wharf built as the ordinary public wharf is

(Testimony of Edward Webster.)

constructed with piles and ordinary bents, capped and decked, were constructed across the face—were constructed from the point where the old Murray and Carroll Dock, or wharf, stood through to the line of the Pacific Coast Co. Dock—I mean to the line of the Young's wharf, which you say stands to the immediate easterly boundary of this, what would be the effect as to whether or not that could be used for a landing place for scows or the laying up of boats?

The COURT.—You need not ask him any such question as that. It stands to reason—common sense. Here is a gridiron, here is a wharf, and if you build something right in front of it, you can't get a scow in there.

Mr. GUNNISON.—Very well.

Q. (By Mr. GUNNISON.) Are you able to say what the cost of that gridiron, the James gridiron and approaches is? A. The cost?

Q. Yes.

A. Oh, I think that would run into three or four hundred dollars, something like that.

Mr. GUNNISON.—There might be another question, but I think that we have finished our examination in chief.

The COURT.—We will take a short recess, then you may put Mr. Swan on, Mr. Bayless.

(Whereupon the Court took a recess for five minutes.) [245—205]

[Testimony of W. F. Swan, for Plaintiff.]

W. F. SWAN, a witness sworn in behalf of the plaintiff, being called out of order by permission of the Court, testified in rebuttal as follows:

Direct Examination.

(By Mr. BAYLESS.)

Q. State your name and residence, Mr. Swan.

A. W. F. Swan, Bellevue, Washington.

Q. You were formerly the agent of the Pacific Coast Co. at Juneau? A. Yes, sir.

Q. During what years?

A. August, 1903, until January, 1911.

Q. What were your duties as such agent?

A. I was agent for the Pacific Coast Co. and Pacific Coast Steamship Co., in charge of their properties here and in charge of their transportation business.

Q. Do you know the property involved in this action? A. Yes, sir.

Q. Were you acquainted with it when you first came?

A. Yes, the property was turned over by the former agent as being property of the Pacific Coast Co.

Q. Was that property claimed by the Pacific Coast Co. at that time? A. Yes, sir.

Q. Is that part of the old Carroll-Murray wharf site? A. Yes, sir.

Q. What was its situation with reference to occupation by the company of the Carroll-Murray wharf site when you first came here?

A. Well, they used the warehouse as a storage

(Testimony of W. F. Swan.)

warehouse at that time. [246—206]

Q. Who were the occupants?

A. I think there was a man named Calder in there when I first came here.

Q. Was any part of it used as a sardine factory or glove factory?

Mr. GUNNISON.—We object to that question as irrelevant, incompetent and immaterial and suggestive.

The COURT.—Objection overruled.

A. It was not used at that time as a sardine factory. It was a storage warehouse for fishing gear and salt.

Q. (By Mr. BAYLESS.) Was that occupied by tenants of the Pacific Coast Co.?

Mr. GUNNISON.—We object to that as leading.

The COURT.—Objection overruled.

A. Yes, I think it was.

Q. (By Mr. BAYLESS.) Well, now, how much of the Carroll-Murray wharf site was actually occupied by the Pacific Coast Co. or its lessees?

Mr. GUNNISON.—We object to that question on the ground that it is irrelevant, incompetent and immaterial; that there is no evidence by this witness as to what the Murray and Carroll wharf site consisted of. It is objected to further on the ground that it is too indefinite and not confined to the land in controversy or to the structure known as the Murray and Carroll wharf.

The COURT.—The question is objectionable because it is not rebuttal. The other objections I don't

(Testimony of W. F. Swan.)

think will count. If you confine your question to the particular thing in controversy, then it would be proper rebuttal, but to ask him what the Carroll wharf site was used as is not rebuttal. What this piece of land in controversy was used for by the company, if it was used at all, would be in rebuttal.
[247—207]

Q. (By Mr. BAYLESS.) Mr. Swan, was this particular piece of property now claimed by Mr. James actually occupied by the company when you first came here? A. No, sir.

Mr. GUNNISON.—We object—well, he has answered it.

The COURT.—I didn't hear his answer.

Mr. GUNNISON.—We object on the ground that it is irrelevant, incompetent and immaterial, leading and suggestive; that the proper method it seems to us would be to ask him what they did or what they had on it or how they used it.

The COURT.—Yes, I think so, Mr. Bayless. Reform the question and ask him what, if anything, they did with this particular piece of property.

Q. (By Mr. BAYLESS.) What, if anything, did the Pacific Coast Company do, or what, if anything, did the Pacific Coast Company do with this property about the time you came here?

Mr. GUNNISON.—We object to that unless it is confined to the property in controversy.

The COURT.—He says this particular piece of property.

Mr. GUNNISON.—Very well.

(Testimony of W. F. Swan.)

A. They weren't doing anything with it.

Q. (By Mr. BAYLESS.) What was the situation when you first came here?

A. To the best of my knowledge the ground was vacant.

Q. Was it occupied by any particular person?

A. I didn't know that it was, no.

Q. Did you see Mr. James hauling lumber or landing scows and rafts there when you arrived?

Mr. GUNNISON.—We object to that as leading and suggestive.

The COURT.—Ask him what, if anything, he saw Mr. James do there. [248—208]

Q. (By Mr. BAYLESS.) What, if anything, did you see Mr. James do there about the time you arrived?

A. I didn't see it being used by Mr. James or any one else at that time.

Q. Did you know that Mr. James was landing rafts or scows there at that time?

Mr. GUNNISON.—Same objection—leading and suggestive.

The COURT.—Well, of course, Judge Gunnison, it is leading in one sense of the word.

Mr. GUNNISON.—This isn't examination in chief. Mr. Swan is a friendly witness and he is an intelligent man and it isn't necessary.

The COURT.—Mr. Swan is so intelligent and is so honest that he is not going to answer a question because Mr. Bayless wants it answered in a certain way and to direct his attention will not result in any

(Testimony of W. F. Swan.)

prejudice one way or the other.

Mr. GUNNISON.—I don't mean to intimate that it would. I have just as much regard for the integrity of Mr. Swan as the Court, but it seems to me that it isn't the proper way to examine him.

The COURT.—Read the question.

(Q. read by stengrapher:) Did you know that Mr. James was landing rafts or scows there at that time? A. No, I did not.

Q. (By Mr. BAYLESS.) What was the situation there in 1904, Mr. Swan?

A. If I remember correctly, it was used some in 1904 or right about that time that that part of the land was used or near there.

Q. For what purposes and by whom? [249—209]

A. Well, the scows were unloaded there and I didn't know at that time who those scows belonged to.

Q. I believe you said you had supervision on behalf of the company of all the company's property?

A. Yes.

Q. What did your supervision with reference to this piece of property consist of?

A. Well, I didn't interfere with any one at that time unless they were putting on permanent structures or something of that sort on the company's property and, in fact, I didn't pay much attention to it, the fact that they were landing or using a portion of the beach for landing purposes.

Q. Do you know the date the street was put down from the Juneau Iron Works to the sawmill?

(Testimony of W. F. Swan.)

A. I believe it was in the latter part of 1906, possibly October, either September or October they started the work there.

Q. Do you know who, if any one, was occupying that beach at that time?

Mr. GUNNISON.—You mean this piece?

Mr. BAYLESS.—This particular portion of the beach when the street was built down through there.

A. (By the WITNESS.) I don't remember that it was any more occupied at that time than any other.

Q. (By Mr. BAYLESS.) Do you know whether or not there were any casual occupants of that beach.

Mr. GUNNISON.—Object to that as leading.

The COURT.—Objection overruled.

A. As I remember, possibly a boat beached there for repairs or something like that—hailed up for repairs or something of that sort was done, but nothing permanent—no permanent occupancy by any one.

[250—210]

Q. What would you say as to any occupancy by Mr. James of the beach at that time in 1905—about the time the street was finished?

A. In 1905 the Pacific Coast Co. leased a landing place there to the receiver of the Wrangell sawmill for the purpose of landing lumber there for the Perseverance Company. That was done out of consideration by the company for the Perseverance people.

Mr. GUNNISON.—We object to the reasons for it and we ask leave to interrogate the witness in order to form an objection. May I ask him a question?

(Testimony of W. F. Swan.)

The COURT.—I think that is cross-examination. Read the question.

(Q. read by stenographer:.) What would you say as to any occupancy by Mr. James of the beach at that time in 1905—about the time the street was finished?

A. In 1905 the Pacific Coast Co. leased a landing place there to the receiver of the Wrangell sawmill for the purpose of landing lumber there for the Perseverance Company. That was done out of consideration by the company for the Perseverance people.

The COURT.—That would be a motion to strike.

Mr. GUNNISON.—We move to strike the latter part of the answer as not responsive to the question.

The COURT.—Motion sustained.

Q. (By Mr. BAYLESS.) Mr. Swan, I hand you a paper and ask you to identify it.

A. That is the lease that was made with Mr. Davidson, representing the receiver of the Wrangell sawmill.

Q. Is this the original lease?

A. I should judge that it was, yes. Yes, I think it is.

Q. Do you know any of the signatures there?
[251—211] A. All of them, yes.

Mr. BAYLESS.—We offer this lease in evidence.

Mr. GUNNISON.—We object to the introduction of the lease on the ground that it is incompetent, irrelevant and immaterial, that it isn't in rebuttal of any evidence that has been offered by the defendant in the case, and that it is not a lease which in any way is binding upon Mr. James. The date of the

(Testimony of W. F. Swan.)

lease is July 1, 1905, and the length of the lease is only for six months, and it only covers a portion of the ground in controversy, and, further, that the recital "which said tide lands abutt and is entitled to the littoral rights thereto" is a recital which is not sustained by any evidence in the case; it is a self-serving declaration and is not binding on the defendant in any way. It is a contract between other parties.

The COURT.—It shows the exercise of an act of ownership over the property in dispute.

Mr. GUNNISON.—It shows it as based on the ownership of the upland. Our contention is that that has been cut off.

The COURT.—That may be true, but that goes to the weight of it.

Mr. GUNNISON.—Exception. And that was part of their case in chief and not rebuttal.

The COURT.—I don't pass on the effect of it at all.

Mr. GUNNISON.—That is the difficulty of offering this out of its order.

Mr. BAYLESS.—I think it is proper rebuttal testimony to show that at the time Mr. James was claiming to have been in possession we were actually in possession and I will show that possession was actually taken under the lease. I think one of the essential part of Mr. James' case is that he [252—212] show that his possession was exclusive.

(Admitted in evidence and marked "Plaintiff's Ex. #22.")

(Testimony of W. F. Swan.)

Mr. GUNNISON.—Exception.

Q. (By Mr. BAYLESS.) Mr. Swan, what were the negotiations leading up to this lease?

Mr. GUNNISON.—We object to that as incompetent, irrelevant and immaterial—the lease speaks for itself—and that the answer to that question would be in no way rebuttal of any evidence in the case.

The COURT.—I don't see where it is material, Mr. Bayless. Objection sustained.

Q. (By Mr. BAYLESS.) This lease was executed, Mr. Swan, while you were the agent of the company in Juneau?

Mr. GUNNISON.—We object to that question on the ground that it is irrelevant, incompetent and immaterial.

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception.

A. Yes.

Q. (By Mr. BAYLESS.) What, if anything, was done with reference to taking possession of the property leased by the lessee?

Mr. GUNNISON.—We object to that as irrelevant, incompetent and immaterial, not the best evidence and not rebuttal.

The COURT.—What is it rebuttal of, Mr. Bayless?

Mr. BAYLESS.—It is rebuttal of Mr. Webster's testimony that Mr. James was in possession down there and had a gridiron and was occupying the beach for the purpose of loading and unloading scows and rafts.

(Testimony of W. F. Swan.)

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception.

Q. (By Mr. BAYLESS.) What was done by the lessee with reference to taking possession of the property leased? [253—213]

A. They placed, or had placed, there a structure for handling lumber from the scows to the beach and loading teams.

Q. Just describe this structure.

A. I don't remember much about it. It was sort of a gridiron with a platform back of it. They placed scows on the gridiron and discharged lumber on to the wagons or platform. I don't remember the exact description of it at this time.

Q. What was this gridiron used for?

A. They used it in handling lumber received from Wrangell.

Q. And what was this lumber used for?

A. Construction work in the Perseverance Mine.

Q. Do you know how long this gridiron was occupied? A. I do not, no, sir.

Q. Do you know who occupied it?

A. Well, not personally.

Mr. GUNNISON.—Well, then, we object to any statement the witness may say.

Q. (By Mr. BAYLESS.) Did you ever see Mr. James occupying that gridiron?

A. I don't believe I did.

Q. Have you ever observed Mr. James occupying any structure on this particular piece of tide land?

A. I don't know as I ever saw Mr. James person-

(Testimony of W. F. Swan.)

ally on the ground in my life.

Q. Do you know whether or not any one occupied any structure on the property in dispute?

A. I know that it was occupied more or less in the handling of lumber down there off scows and rafts.

Q. Do you know who the individual or corporations were?

A. No, I do not,—outside the representatives of the Perseverance I didn't. As I said, I wasn't personally acquainted [254—214] but I knew they were working for the Perseverance.

Q. Were you aware of any claimants of the ground in dispute during the time you were in charge, adverse to the Pacific Coast Co.?

Mr. GUNNISON.—Object to that question on the ground that it is incompetent, irrelevant and immaterial, leading and suggestive.

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception.

A. No one ever claimed the property during my time in Juneau.

Q. (By Mr. BAYLESS.) Did Mr. James ever make a claim of ownership at the time you were here?

Mr. GUNNISON.—Same objection.

The COURT.—Same ruling.

A. No, sir, he never did.

Q. (By Mr. BAYLESS.) You knew Mr. James, did you? A. I did.

Q. Were you on friendly or unfriendly terms with him?

(Testimony of W. F. Swan.)

A. I always thought it was on friendly terms with him.

Q. Were you doing any business with him?

A. Yes, sir.

Q. Just state the extent of your business with him.

Mr. GUNNISON.—We object to that as incompetent, irrelevant and immaterial, and not rebuttal.

The COURT.—Objection sustained, unless it is merely preliminary to some particular business relation.

Mr. BAYLESS.—If the Court please, I desire to show that Mr. James and Mr. Swan were on very friendly terms.

Mr. GUNNISON.—That is admitted—that Mr. James was conducting business with the company continuously, and that [255—215] Mr. Swan never heard him make any adverse claim to this property, and that he was in a position to know whether or not Mr. James claimed this adversely to the company during the time he was agent.

The COURT.—You cannot show that simply by showing friendship. If you can show any statement that Mr. James has made to Mr. Swan or any statement that Mr. Swan heard Mr. James make with reference to the property, it would be competent, but simply to show that he has never made a claim to the property wouldn't be proper.

Q. (By Mr. BAYLESS.) Were you aware that Mr. James or the George E. James Co. was occupying the gridiron on this ground?

Mr. GUNNISON.—We object to that question as

(Testimony of W. F. Swan.)

irrelevant, incompetent and immaterial.

The COURT.—Objection overruled.

Mr. GUNNISON.—It is indefinite as to time also.

The COURT.—Well, then, when it is indefinite as to time, a question of that kind embraces all time.

Mr. GUNNISON.—Exception.

Q. (By Mr. BAYLESS.) While you were agent, did you know that Mr. James was occupying a gridiron on this piece of property?

A. I don't know that I did, no, that the gridiron belonged to Mr. James or was claimed by him. I knew the gridiron was there and it was my impression that it was some continuation of the arrangement for handling lumber.

Mr. GUNNISON.—We object to what Mr. Swan's impression was and move to strike it.

The COURT.—Yes, that part may be stricken.

Q. (By Mr. BAYLESS.) Mr. Swan, if you had been aware of any adverse claim of that piece of property, what would you have done as agent of the company? [256—216]

Mr. GUNNISON.—We object to that question as irrelevant, incompetent, and immaterial, that it calls for a conclusion, and is not rebuttal.

The COURT.—Objection sustained.

Q. (By Mr. BAYLESS.) Mr. Swan, did the Pacific Coast Co. act as the owner of that particular piece of property during the time you were agent here?

Mr. GUNNISON.—We object to that as irrelevant, incompetent, and immaterial, as calling for a

(Testimony of W. F. Swan.)

conclusion, and not rebuttal.

The COURT.—Objection sustained.

Q. (By Mr. BAYLESS.) What, if any, acts of ownership, Mr. Swan, did the Pacific Coast Co. exercise while you were the agent here?

A. You mean in reference—

Q. To this particular piece of property.

A. Well, as I said, they turned the property over to me as owning the property and they leased it, the property, with improvements put on it for carrying on business.

Mr. GUNNISON.—We move to strike the answer as not responsive and we object to the question on the ground that it calls for a conclusion of the witness as to what an act of ownership was.

The COURT.—Well, Judge Gunnison, you allowed the question to be asked and you allowed it to be answered long before you made any objection to the question and now when the question is answered, you come and move to strike out the answer without having objected to the question. The motion is denied and your objection is overruled.

Q. (By Mr. BAYLESS.) Mr. Swan, did you pay any taxes for the ground?

A. Yes, sir. [257—217]

Q. During what years did you pay the taxes?

Mr. GUNNISON.—We object to that. If the company paid the taxes it might be competent.

A. I paid it with their money.

Mr. GUNNISON.—We object to the same on the ground that the question as to what ground the taxes

(Testimony of W. F. Swan.)

were paid for is too indefinite.

The COURT.—The question is objectionable because it is not rebuttal.

Mr. BAYLESS.—If the Court please, Mr. James has produced testimony to show that he exercised certain acts of ownership over this property. I apprehend that he must show that he had exclusive possession and ownership. We rebut that by showing that we ourselves exercised certain acts of possession over this property, to wit, by the payment of taxes. It would indicate that we had no intention of abandoning the property, at least.

The COURT.—You should have proven that in your case in chief.

Mr. BAYLESS.—If that is the case, our rebuttal testimony is no good, for the reason that we should have put all that in in chief.

The COURT.—This question as to who paid the taxes on the property that you now ask Mr. Swan is not in rebuttal. If you think it is, tell me what it rebuts.

Mr. BAYLESS.—I have just been trying to explain that it is a circumstance that would indicate our ownership of this property at the time Mr. James was claiming to own it.

The COURT.—Objection sustained.

Mr. BAYLESS.—Your Honor will preclude me from introducing any testimony—

The COURT.—If you make an application to reopen your [258—218] case in chief and put Mr. Swan on to do that, you might do it, but this is not

(Testimony of W. F. Swan.)

rebuttal testimony and I say it doesn't rebut anything. The objection is made that it is not rebuttal.

Mr. BAYLESS.—I am certainly at sea in this respect. Upon consulting with our associate counsel in Seattle and with Mr. Shackelford—

The COURT.—I don't care if you consulted with Elihu Root or Chief Justice White—it doesn't make any difference to me at all. I am going to decide it the way it strikes me, without reference to anything Mr. Shackelford or anybody else says, and the ruling of the Court is that that is not rebuttal.

Mr. BAYLESS.—I understand. I would like the privilege of reopening my case in chief to get this before the Court. Having been under a misapprehension of the way to present this case, I have saved the best part of my case for rebuttal testimony, and I would like very much to reopen my case in chief.

The COURT.—Any objection?

Mr. GUNNISON.—Yes, sir. The case in chief has been closed and they have rested, and we have made our motion for a nonsuit and we proceeded with our case thus far. We have consented for him to show everything in rebuttal, but we think it isn't the proper way to try a lawsuit and we don't think it is proper to do so.

The COURT.—That may all be true, Judge Gunnison, but lawsuits are not contests of wit between counsel. A lawsuit is to get at the truth and to decide the matter according to law and according to the evidence, and no harm can be done to your side at all; consequently, I shall permit counsel to reopen

(Testimony of W. F. Swan.)

his case and recall Mr. Swan in chief. [259—219]

Mr. GUNNISON.—May I inquire to what extent the reopening of the case is permitted, in order that I may know how far our objections may go?

The COURT.—Well, perhaps Mr. Bayless had better complete his examination that is strictly rebuttal; then I will permit him to ask some questions in chief.

Mr. GUNNISON.—We except to the ruling of the Court.

Q. (By Mr. BAYLESS.) Mr. Swan, what was the arrangement between the receiver of the Wrangell sawmill and the Perseverance Company—

Mr. GUNNISON.—We object to that question as irrelevant, incompetent, and immaterial—

Q. With reference to this particular piece of ground?

Mr. GUNNISON.—And not the best evidence. There is no evidence that Mr. Swan is acquainted with the contracts of those two parties, and that it is in rebuttal of nothing.

Mr. BAYLESS.—Well, it is in rebuttal of the claim of Mr. James that he was using this platform—that that platform was at work.

Mr. GUNNISON.—He hasn't testified—

Mr. BAYLESS.—He hasn't, but the others have.

Mr. GUNNISON.—But there isn't any evidence that that was his. It has been described, and while he was there Mr. James had a platform on the other side of it.

The COURT.—Read the question.

(Testimony of W. F. Swan.)

(Q. read by stenographer:) Mr. Swan, what was the arrangement between the receiver of the Wrangell sawmill and the Perseverance Company with reference to this particular piece of ground?

Mr. GUNNISON.—We further object in that there isn't any evidence here that Mr. Swan knew anything about the arrangements between the receiver and the Perseverance Company [260—220] that had any connection other than the lease, which has been testified to and admitted in evidence.

The COURT.—I do not see how it is strictly rebuttal, Mr. Bayless.

Mr. BAYLESS.—Very well, sir.

The COURT.—The objection will be sustained on the ground that it is not rebuttal.

Mr. BAYLESS.—I will close my examination on rebuttal. Do you wish to cross-examine him on rebuttal first?

Mr. GUNNISON.—I do.

Cross-examination.

(By Mr. GUNNISON.)

Q. Mr. Swan, in 1903 you came to Juneau as Agent of the Pacific Coast Co., did you? A. Yes, sir.

Q. You testified in response to Mr. Bayless' question that the property of the Pacific Coast Co. was turned over to you. Where were you when it was turned over to you—when the act of turning it over to you was performed? A. I don't remember.

Q. By whom was it turned over to you?

A. The agent I relieved.

Q. Who was he? A. Mr. Dautrick.

(Testimony of W. F. Swan.)

Q. How was it turned over? A. By inventory.

Q. Where is the inventory that showed this particular piece of property?

A. Supposed to be in the records of the Pacific Coast Co. [261—221]

Q. Where? A. I could not tell you.

Q. You know that this particular piece of property was in those records—in that inventory?

A. I think all of the property that was passed was described.

Q. How was this particular piece described?

A. I don't remember.

Q. I think you said you didn't know when you arrived here that it was occupied by anyone.

A. That is what I said, yes.

Q. Do you know that anyone used it?

A. I knew they used it afterwards, yes.

Q. Well, when you came here did you know there was anyone using it? A. No, I did not.

Q. When was the first intimation you had that anyone was using that? A. I don't remember.

Q. Are you able to recall within a year or two of it, Mr. Swan? A. No, I don't know that I am.

Q. What was the condition of the Murray and Carroll wharf when that wharf was turned over to you, Mr. Swan? A. In what respect?

Q. In respect to its condition as a wharf?

A. Well, I wouldn't say it was in first-class condition for handling ocean-going steamers.

Q. To what use were the warehouses being put at that time—the warehouses on the wharf?

(Testimony of W. F. Swan.)

A. If I remember correctly, they were used for storage.

Q. By whom?

A. I think there were parties named Calder and Thomas—Calder anyway. [262—222]

Q. Storage of what? A. Fishing gear and salt.

Q. Was it a saltery? A. No, sir.

Q. Now, you were here until what time?

A. January, 1911.

Q. During the time you were here, was the Murray and Carroll wharf ever used as a landing place for vessels? A. Not large vessels, no, sir.

Q. Not large vessels?

A. No; some smaller craft would tie up there.

Q. Did they use it as a landing place or more as a mooring place?

A. Used it as a landing place, for landing fish.

Q. What was the decking and buildings on it used for during the period you were agent here?

A. Decking in the buildings?

Q. Yes, sir.

A. You mean floors of the building?

Q. Yes, sir, the deck of the old wharf and the buildings themselves?

A. There was a time it was used as—a portion of the old Carroll wharf was used—and new buildings put up in conjunction with the Carroll wharf property—used at one time as a sardine factory, smoke-house, and—

Q. Glove factory?

(Testimony of W. F. Swan.)

A. Later the newer portion of it was used as a glove factory.

Q. Now, a portion of it was also used as an iron works, wasn't it—wasn't the Juneau Iron Works on there at that time—when was that put in?

A. The Juneau Iron Works?

Q. The Forrest Iron Works. [263—223]

A. I don't remember. Sometime after I came here.

Q. By a portion of that ground?

A. I think a portion of the substructure was used for the building.

Q. Now, did any portion of the structure of the Murray and Carroll wharf, or any of these buildings to which you refer, extend over this piece of ground in controversy? A. No, sir.

Q. You say that the Pacific Coast Co. was not putting that to any use when you arrived here?

A. They were not, no, sir.

Q. Have they ever put that to any use themselves, this particular piece of tide-land in controversy.

A. I don't think they have.

Q. What acts of dominion have they exercised over that piece of ground with reference to using it since you have been here as agent either by themselves or by any other person?

A. Well, they exercised the right to lease it to others who did use it.

Q. How many times, Mr. Swan?

A. I think just the once.

(Testimony of W. F. Swan.)

Q. The once you testified on your direct examination?
A. Yes.

Q. Now, that lease recites that Mr. Davidson, the receiver—Charles E. Davidson, the receiver of the partnership estate of E. O. Sylvester and Thomas A. Willson—had erected a platform in front of Lots 1 and 2 in Block T of the Town of Juneau, was that erected before that lease was executed?

A. I think it was, if I remember correctly—that it was erected by verbal permission and the lease drawn up afterwards.

Q. How long before?

A. I couldn't tell you. [264—224]

Q. How long did Charles E. Davidson, as receiver of the partnership estate of Willson & Sylvester, occupy that tract—the tract in controversy?

A. I don't remember.

Q. Have you ever known?

A. I don't think I have.

Q. You testified that he went into possession of it—how do you know he went into possession of it?

A. Well, I saw what I suppose are acts of possession.

Q. What was it you saw?

A. I saw a scow there with some lumber or—

Q. Whose scow was it? A. I don't know.

Q. Might it, or might it not have been Mr. James' scow?

A. It might have been; I don't know the extent of his property up here.

Q. You say that it was part of your duties to

(Testimony of W. F. Swan.)

supervise the property of the Pacific Coast Co. In performance of that duty, what supervision, or how often did you visit the piece of ground in controversy here during the time you were agent?

A. Well, I do not know as I could say just how often I was down there on that particular ground—I should say about an average of twenty-five times a year.

Q. About twice a month? A. Yes, more or less.

Q. Now, when did you say Mr. Davidson, or this scow of lumber which you supposed was the Davidson—the Wrangell scow—when was it you saw that on that piece of ground?

A. I don't remember. It must have been a short time after the permission was given for them to go there—possibly in the summer of 1905. [265—225]

Q. Before or after the least was executed?

A. I think they had permission to go ahead and put up a structure pending the lease—sending to Seattle to be signed by the company. The structure was on there at the time the lease was executed. Shortly after that I think I saw it was in use.

Q. How many scows of lumber did you see on there during the year 1905? A. I don't remember.

Q. Would you say more than one?

A. Oh, yes, I think I did.

Q. Well, how many would you say?

A. It would be simply guesswork. I could say and tell the truth that I saw more than one, but as to how many is simply guesswork.

Q. Are you able to say at this time whether these

(Testimony of W. F. Swan.)

scows, more than one, you saw were the scows of Mr. James or scows of the Wrangell sawmill? A. No.

Q. Not able to identify either?

A. I didn't know the James scow or the Wrangell scow and I was under the impression that it was lumber for the Perseverance and was all done for the—the arrangement they had with the Wrangell people—I thought it was carried on right together, that James and the Wrangell people were working together. That is my recollection of it.

Q. On what did you base that?

A. The fact of the arrangements the Pacific Coast Company had with the Perseverance—that they wanted permission to handle lumber over the beach down there.

Q. Did you pay any particular attention to the structure that was erected on this piece of ground?
[266—226]

A. No, I didn't pay any particular attention to any of the structures erected there.

Q. Are you able to say how long that lasted of your own knowledge?

A. No, not in months—not in time—I don't think so.

Q. Do you know whether it was there in the spring of 1906? A. No, I do not.

Q. When did you first see the gridiron which is now on that ground?

A. I supposed it was the original gridiron.

Q. What led you to suppose that?

A. I didn't see any change.

(Testimony of W. F. Swan.)

Q. You didn't see any change? A. I did not.

Q. You have heard the testimony of the witness Webster—do you still think it was the same structure?

A. No, I don't think I would jeopardize his word that it was or wasn't the same structure. I don't think I did pay the attention to it that he did. He evidently built it, so he states, and I didn't pay any particular attention to it.

Q. That was an impression you had and not based on any close observation?

A. That is the impression and not any actual knowledge.

Q. It didn't go even so far as an opinion?

A. I don't know how to draw the line between impression and opinion, but that was my opinion—that it was the same structure.

Q. And on what did you base that?

A. On the fact that I didn't see them making any changes.

Q. You didn't happen to be there when any changes were being made?

A. No, I happened to be in California.

Q. When were you in California? [267—227]

A. 1906.

Q. The entire year? A. No; fall of 1906.

Q. What time did you go to California?

A. First part of October—came back in November.

Q. Were you here in the summer of 1906 and spring of 1906?

(Testimony of W. F. Swan.)

A. Yes, I was here all the time except October and November, 1906.

Q. You, as I understand, now say you did not see that place where that structure was at any time after the structure had fallen down or been taken away?

A. I don't know as I said that.

Q. Well, do you mean that?

A. I meant that I thought the gridiron was the original gridiron that was put in there.

Q. And you thought that because you couldn't see any change?

A. I never saw any particular change—some repairs going on down there. I supposed they were repairing the old gridiron.

Q. So you don't know whether they were repairs to the original gridiron or to the subsequent structure?

A. Or whether there was a new gridiron, I don't know of my own knowledge, no, sir.

Q. Now, did you see any scows there in 1906—well, I think I have asked you that— Did you see any there in 1907, scows loaded with lumber?

A. I don't remember that I did.

Q. Did you in 1908?

A. I don't remember that either. I don't remember whether I saw them or not.

Q. In 1909? A. I don't remember that either.

Q. In 1910? [268—228]

A. I don't remember that.

Q. You left here January 1, 1911?

A. Well, January 20, 1911.

United States
Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.
(IN THREE VOLUMES.)

PACIFIC COAST COMPANY, a Corporation,
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vs.

GEORGE E. JAMES and EDWARD WEBSTER,
Appellees.

VOLUME II.
(Pages 289 to 640, Inclusive.)

Upon Appeal from the United States District Court
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Filed

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(Testimony of W. F. Swan.)

Q. Well, I mean your connection with the company. Now, you testified that you didn't interfere with—I will withdraw that—you testified that in 1904 you saw some one on or near this land unloading some scows on the beach?

A. Yes, I did testify to that.

Q. Was it between the Chief Johnson house, on the beach line in front—between the Chief Johnson house and the old Murray and Carroll wharf, that you saw these scows?

A. I couldn't tell you in regard to that.

Q. Are you able to say now whose scows they were? A. No, sir.

Q. Did you see any scows unloading any lumber in 1903 at that place?

A. No, I don't remember.

Q. I think you said you never saw Mr. James on the ground there?

A. I don't think I did; that is, I don't remember that I did. It is possible that I did—it has been eight years—but I don't remember that I did.

Q. Now, I think you testified that you didn't pay much attention to that piece of ground down there, did you not? A. That is what I said, yes.

Q. Is that what you mean?

A. That is what I mean.

Q. Now, you also testified that you never interfered with anyone unless they were putting permanent structures on the ground?

A. That is what I testified to, yes, sir.

Q. And the reason you didn't interfere with any-

(Testimony of W. F. Swan.)

body on this land [269—229] in question was because you supposed that that was the gridiron that had originally been put on there under this lease?

A. Yes.

Q. That lease called for six months, did it not?

A. Yes, sir.

Q. Was that lease renewed?

A. Not to my knowledge.

Q. Then if anyone was on there using that structure after the first of January, 1904, that would be their using a permanent structure without the permission of the company, wouldn't that?

A. That would be, unless they had permission of the company.

Q. Did anybody have permission from the company?

• The COURT.—1904?

Mr. GUNNISON.—I didn't mean 1904; I meant 1906—pardon me.

A. Well, I think, of course, it was only a verbal permit, so that I don't know—

Q. There was no one had a written lease?

A. No; no one with a written lease.

Q. You say in October, 1906, the street was built, did you?

A. That is what the records show here; I suppose that is definite enough.

Q. I ask that with reference—you said in 1906 there were no permanent occupants of the ground?

A. No permanent occupants of the ground at any time during the time I was here.

(Testimony of W. F. Swan.)

Q. Will you explain what you mean by permanent occupants?

A. People that would go on there and stay there.

Q. Under permission of the company for permanent—would you call the Davidson lease permanent occupation?

A. Permanent as long as he stayed there. [270—230]

Q. Then you didn't call anybody else—that was the only permanent, to your knowledge the only permanent occupant of the ground?

A. Yes, sir, that was the only one I know of.

Q. You say that no one ever claimed this ground in question during that time? A. Never did.

Q. Will you explain what you mean by no one ever claimed the ground?

A. I mean came to me personally and said they had an interest in the property and objected to structures being put on there by permission of the company. The gridiron was put on there in the first place.

Q. And your meaning is that no one had ever claimed that property, is that no one had ever gone to you as agent of the Pacific Coast Co. and said to you that he claimed that ground—that he, the person coming to you, claimed the ground?

A. I mean that I never heard, in any way, that anybody claimed that, either by personal talk or through someone else.

Mr. BAYLESS.—Q. Outside of the Pacific Coast Co.? A. Yes.

Q. (By Mr. GUNNISON.) And you didn't

(Testimony of W. F. Swan.)

know that the gridiron that was on there from 1906 or 1907 was owned or claimed or used by George E. James?

A. No, I didn't know it belonged to him.

Q. You were the agent of the Pacific Coast Co.?

A. Yes, sir, I was the agent and didn't know that belonged to James.

Q. But you know it was there and used?

A. Yes; I told you before that I thought it was the same gridiron that was originally built there.

[271—231]

Q. But you didn't inquire about it?

A. I didn't inquire at all.

Mr. GUNNISON.—That is all.

Redirect Examination.

(By Mr. BAYLESS.)

Q. You thought this gridiron which was used by Mr. James was the same gridiron which Mr. Davidson had erected? A. That was my impression.

Q. And that was used for the purposes of the Perseverance Company? A. That is it.

Q. The same purposes for which the first gridiron had been constructed?

Mr. GUNNISON.—We object to that question as leading and not proper cross-examination.

The COURT.—This is not cross-examination, but is redirect examination. It is a repetition. That was drawn out by you, not by Mr. Bayless. It was brought out on your cross-examination. You are simply wasting time.

Q. (By Mr. BAYLESS.) Mr. Swan, you said

(Testimony of W. F. Swan.)

something about a verbal permit; just explain what you meant—was that with reference to Mr. James?

Mr. GUNNISON.—We object to that question as irrelevant, incompetent and immaterial, and not proper redirect. We didn't go into it at all. And that, also, it is not the best evidence.

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception.

A. No, that was in reference to the Perseverance Company, in regard to handling lumber over their property—property of the Pacific Coast Co. [272—232]

Q. (By Mr. BAYLESS.) Did I understand you to say it was your impression that Mr. James was occupying this ground by permission from the company?

A. No, I didn't say that. I don't know that Mr. James ever asked for permission.

Q. I understood you to say that it was your impression that Mr. James had verbal permission from the company?

A. No, I didn't say that. My impression was that the arrangement with the Perseverance was being carried on. I should certainly have stopped it being carried on, had I known it wasn't.

Mr. BAYLESS.—I have just one more question in examination in chief.

Recross-examination.

(By Mr. GUNNISON.)

Q. You say there was a verbal permit to the Perseverance Company to handle freight over the

(Testimony of W. F. Swan.)

Pacific Coast Company's property—did that refer to any of the Pacific Coast Company's property?

A. It didn't and didn't refer to freight, and I didn't say it was passing over the wharf. In consideration of the other business they were doing with us—

Q. What part of the beach?

A. Down where the gridiron was. That was why this lease was given to Davidson to cover that.

Q. When was that verbal permission given?

A. About the time the lease was made.

Q. And that wasn't given—was that for any particular extent of time or period of time?

A. No, it ran on indefinitely. [273—233]

Q. Then it wasn't for any particular period of time? A. No.

Q. Was that lease made to take the place of that verbal agreement? A. No, sir.

Q. To whom, if you know, was Davidson furnishing lumber at that time and over that wharf?

A. I think to the Joshua-Hendy Machine Company of San Francisco, who had a contract with the Perseverance for the construction of the mills up in the Basin. This is only hearsay with me—the impression I got from Mr. Mitchell, Superintendent of the Perseverance, who made a request on us to handle it over there.

Q. This lease was made in pursuance of your permission to the Perseverance Company to handle lumber over the beach?

(Testimony of W. F. Swan.)

A. Yes, sir, in consideration that they would give us other business.

Q. There was no other lease given to any other person for that tide land?

A. I don't think it was ever leased to anyone else; I don't remember if it was.

Q. And the only oral permission was to the company?

A. Perseverance, Joshua-Hendy, Wrangell Mills, and possibly Mr. James—I don't know whether he was given permission or not.

Q. You don't remember whether you gave Mr. James permission or not?

A. No, I don't remember.

Q. You thought the terms of that were being carried out by Mr. James—what made you think that?

A. Well, from what the Perseverance people—the impression they gave me of buying lumber from Mr. James.

Q. Then it wasn't with reference to anything you saw of this [274—234] piece of ground that led you to that opinion, was it? A. How is that?

Q. You said, as I understood you, that you never saw Mr. James on the ground and you didn't know the gridiron was claimed by Mr. James and you understood he was using it—

A. I think you are right. I don't think I knew.

Q. You said, in response to a question from Mr. Bayless, that you supposed that the occupancy of

(Testimony of W. F. Swan.)

that ground was in pursuance of the agreement or verbal permission?

A. We will cut out Mr. James and we will say the lumber being landed there—or whether it came from Wrangell.

Q. Whatever lumber came over there was handled in pursuance of that agreement?

A. That is what I understood.

Q. And if you hadn't you wouldn't have allowed it?

A. Certainly not, when we were in the wharfage business, unless we had some agreement.

Q. Then you don't mean to say—don't mean to be understood as saying you would stop Mr. James any more than anybody else if you had known how that was going on? A. Why, certainly not.

Mr. GUNNISON.—That is all.

Redirect Examination.

(By Mr. BAYLESS.)

Q. Mr. Swan, it was the understanding that this arrangement that existed with the Perseverance people or with the Wrangell sawmill receiver was to continue during the construction period at the Perseverance?

Mr. GUNNISON.—We object to what his understanding was. Anything that was said or done in reference to that might be [275—235] admissible.

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception.

A. Yes, it was my impression to handle the construction material for their mills in the Basin coming

(Testimony of W. F. Swan.)

from the sawmills and also that if they built a road up there.

Q. (By Mr. BAYLESS.) And that supplies would be handled at this particular spot?

A. Yes.

Q. And for that reason you didn't stop them?

Mr. GUNNISON.—We object to that as incompetent, irrelevant and immaterial.

A. Just what I said before.

Q. (By Mr. BAYLESS.) While you were agent, did the Pacific Coast Company pay the taxes on this particular piece of tide lands as well as the other tide lands contained within the Carroll-Murray wharf site?

The COURT.—Do you want to ask that question on your case in chief?

Mr. BAYLESS.—Yes, sir.

Mr. GUNNISON.—We object to the question on the ground that it is too indefinite, incompetent, immaterial and irrelevant, as to what other property he paid taxes on, and that the only evidence that would be admissible here would be as to taxes paid on this particular piece.

The COURT.—Read the question.

(Q. read by stenographer:) While you were agent, did the Pacific Coast Company pay the taxes on this particular piece of tide lands as well as the other tide lands contained within the Carroll-Murray wharf site?

The COURT.—Objection overruled. [276—236]

Mr. GUNNISON.—Exception.

(Testimony of W. F. Swan.)

A. (By the WITNESS.) Yes.

Mr. BAYLESS.—That is all.

The COURT.—Any cross-examination?

Mr. GUNNISON.—No.

(Witness excused.)

(Whereupon Court adjourned until 9:30 A. M., Monday, July 20, 1914, when Court reconvened pursuant to adjournment.) [277—237]

Mr. GUNNISON.—Mr. Webster was to have been here at 9:30 for cross-examination and I told him so Saturday night, and I suppose he misapprehended the hour—so the telephone operator said—and they are looking for him. In the meantime, I will offer two depositions—depositions of Mr. Harper and Mr. Mitchell. I would offer the stipulation entered into between counsel whereby it was stipulated that John R. Mitchell, of Denver, Colorado, might be called and examined before a commissioner as a witness for the defendant, and that Alice Quinn, a Notary Public for the County of Denver, in Colorado, might be designated as the person to take the deposition, and then we offer the deposition of John R. Mitchell—

The COURT.—It has been filed, has been opened and published in the case?

Mr. GUNNISON.—Yes.

The COURT.—Any objection?

Mr. BAYLESS.—I would like a moment to examine this deposition.

Mr. GUNNISON.—At the same time, in order that counsel may examine both, we offer the stipu-

(Testimony of W. F. Swan.)

lation with reference to the testimony of Theodore A. Harper, of Dundee, Oregon, and the deposition on direct and cross-interrogatories of Mr. Harper taken before the commissioner designated in the stipulation.

The COURT.—That has been filed?

Mr. GUNNISON.—Has been filed and published in due course.

Mr. BAYLESS.—We have no objection to the introduction of the two stipulations. We have no objection to either deposition.

Mr. GUNNISON.—Mr. Scott, the witness whom we will call in order to save the Court's time—it is a little bit out of order—will be here in just a moment. [278—238]

The COURT.—I understood that you wanted to bring something to the attention of the Court, Mr. Bayless.

Mr. BAYLESS.—There is just this, your Honor: In the examination of Mr. Swan, certain questions which I asked him on direct examination I understand were questions which I should have asked Mr. Swan in my case in chief; that is to say, that he was properly a witness for the plaintiff in my case in chief, and I will say that I have two or three more witnesses who will testify to circumstances of a similar nature that Mr. Swan was asked to testify to, and, if I have misapprehended the tactics in putting in my case, in order to get all these matters before the Court, I would ask the privilege of reopening my case in chief for that purpose. I will say that I con-

(Testimony of W. F. Swan.)

sulted with my partner about the way of putting in my evidence and also Mr. Stratton, the company's counsel in Seattle, and it was agreed that I put it in in this manner. If I am all wrong about it, I would ask the privilege of changing my tactics in order that the Court may get the facts.

The COURT.—When you were given permission Saturday to interrogate Mr. Swan in chief, you asked him only one question in chief, and that was about the taxes. Do you mean that you have some other testimony about the payment of taxes?

Mr. BAYLESS.—Yes, about the payment of taxes.

The COURT.—Just about that alone?

Mr. BAYLESS.—And certain other circumstances. I will say this, that Judge Gunnison developed a number of things on cross-examination which made it unnecessary for me to make Mr. Swan a witness in my case in chief; that is the reason I asked him no further questions.

The COURT.—You make a statement of the things you [279—239] want to prove by additional witnesses in a concise form, then, if there is something different, I will pass on it, but I cannot reopen the case generally. But if you will tell me your reasons, I will consider the matter of reopening the case.

Mr. BAYLESS.—I would like to do that, your Honor.

The COURT.—If it is going to be done, I think it should be done before the defendant proceeds with his case, because he may want to answer those things by witnesses he has on hand. Of course, I don't say

(Testimony of W. F. Swan.)

that I am going to allow you to do it, but, if you want that privilege—if it is going to be granted at all, it should be granted now, so that the defendant may know what he is going to meet.

Mr. BAYLESS.—All right, sir, I will make a statement. If the Court please, I expect to show that during the time of Mr. James' alleged occupation from 1900 down to the institution of this suit, that the company exercised supervision over this property, had its agents keep squatters off and prevent any one from getting a foothold with the exception of Mr. James, and I expect to explain how Mr. James was allowed to remain there, and I would like to show the acts of ownership exercised by the company during the period Mr. James was on the property. I apprehended that that was properly rebuttal testimony. If your Honor thinks it is testimony which would properly be presented in my case in chief, then I would ask that privilege.

The COURT.—Anything you did in reference to Mr. James' occupation would be proper rebuttal. Anything you did to warn Mr. James off, or to show that he was occupying the ground by permission, is proper rebuttal, so you wouldn't need to reopen your case for that purpose. Of course, it is proper [280—240] rebuttal to rebut anything the defendant brings out, but acts of ownership with reference to other people generally would be part of your case in chief.

Mr. BAYLESS.—Then your Honor would hold that it would be proper for us to show in chief acts

(Testimony of W. F. Swan.)

of ownership during the time he has alleged to be in possession?

The COURT.—If it has no reference to Mr. James at all, that would be in chief, but if it has reference to Mr. James, it would be rebuttal.

Mr. BAYLESS.—The testimony I would offer would have no especial reference to Mr. James.

The COURT.—Well now, Judge Gunnison, have you any objection to counsel putting on witnesses and reopening his case?

Mr. GUNNISON.—I realize the matter of reopening the case in chief is within the sound discretion of the Court, but we think it is now too late to reopen the case in chief and object to it for that reason. It has been reopened once or twice and now they ask to reopen it the third time. We think it is for another purpose than stated before and think it is now too late to do it.

The COURT.—How would it injure you in your case in any way?

Mr. GUNNISON.—Until the testimony should come out—the statement of counsel is so indefinite as to general acts—it might be that we might want to meet it in some way that we couldn't meet it by—

The COURT.—Yes, but that might have been the case if it had been produced in the first place. What I mean is, how are you any worse off now than if it had been developed in chief? You haven't developed anything that I know of— [281—241] in the status of affairs—so far as your opportunity and

(Testimony of W. F. Swan.)

your knowledge of your own case and what to meet is concerned.

Mr. GUNNISON.—Of course, it is true we have assumed from the testimony—rather, instead of assumed, we moved to dismiss the cause, plaintiff's case, and we have rested on that so far as the plaintiff's case is concerned, and have proceeded on our case—with our own affirmative case. We haven't offered any evidence back of 1900 and haven't attempted to rebut anything that has been put in by the plaintiff on any question of that kind.

The COURT.—That is all true, but the witnesses are right here in town. You have already proceeded to the extent, if I remember, of examining Mr. Kohn—

Mr. GUNNISON.—Mr. Roberts, Mr. Webster—

The COURT.—Well, Mr. Kohn and Mr. Roberts. Mr. Webster has not finished yet. So I cannot see that it would injure you in anyway whatsoever.

Mr. GUNNISON.—I can't say on the statement of counsel—I don't know what he wants to prove.

The COURT.—Well, I don't know exactly myself, but I will allow him to reopen his case to a certain extent, but I think he should open it now.

Mr. BAYLESS.—Very well, sir.

The COURT.—When I say "now," I mean the defendant should not be compelled to go on with his case until you finish that point.

Mr. BAYLESS.—Very well, I will agree with that. Will you give us a little time—if your Honor will give me five minutes to telephone, I have one

(Testimony of W. F. Swan.)

witness we can put on now.

Mr. GUNNISON.—We had asked Mr. Scott, who has been engaged with a gang of men, to come up, and while he is absent the work practically stops, and we would like to call him [282—242] and get through with him.

The COURT.—You don't think you would need Mr. Scott in rebuttal of anything Mr. Bayless would bring out?

Mr. GUNNISON.—I might want to call him later.

The COURT.—Very well, you may put him on the stand and later on recall him if such testimony is drawn out by Mr. Bayless' witnesses that you may want to put him on again.

Mr. BAYLESS.—What shall we do with reference to Mr. Webster's examination?

The COURT.—Of course, that will be deferred till later. [283—243]

[Testimony of John R. Scott, for Defendant.]

JOHN R. SCOTT, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. GUNNISON.)

Q. Mr. Scott, will you state your name?

A. John R. Scott.

Q. And your occupation? A. Carpenter.

Q. Where did you live in 1905, at what place?

A. Here in Juneau.

Q. Do you know the piece of waterfront—I will withdraw that—do you know the dock known as—

(Testimony of John R. Scott.)

the place on the beach along Franklin Street known as the old Carroll & Murray wharf? A. I do.

Q. Do you know the piece of ground in controversy in this suit on which Mr. James' gridiron stands?

A. I do.

Q. Did you know that ground in the year 1905?

A. I did.

Q. Were you engaged in any work on that ground in that year? A. I built a little wharf there.

Q. Where, with reference to the gridiron as it now stands and the street?

A. Very near in front of it.

Q. In front of what? A. Of the gridiron.

Q. By in front, you mean between the gridiron and the street, or between the gridiron and deep water?

A. Gridiron and the street. [284—244]

Q. While you were there—what time in the year was that as near as you can recollect?

A. I believe I started work there the last day of May.

Q. And while you were there, did you see Mr. James on the ground? A. I did.

Q. Did you see him—do you know his scows?

A. Why, I know he had a scow.

Q. Did you see him—his scows land there and lumber discharged over this ground?

Mr. BAYLESS.—Object to that as leading.

The COURT.—Well, it is, of course.

Q. (By Mr. GUNNISON.) What do you say with reference to lumber—to the landing of scows and the discharging of lumber over this tract, if any-

(Testimony of John R. Scott.)

thing, during the time you were engaged in work there?

A. There was some scows of lumber that was anchored there and the teams hauled it away.

Q. Whose scows were they, if you know?

A. Why, I supposed they were Mr. James'.

Q. Was Mr. James there at the time that any of them were landed and discharged?

A. Yes, he was there sometimes; I don't say he was all the time, but he was there sometimes.

Q. Now, while you were there engaged in the construction of this platform, or you call it a wharf, did you see any structure on there that was used by Mr. James, any other structure on this waterfront, this particular piece of waterfront?

A. Why, he had something there to rest the ends of his scow on; I think two benches or something like that.

Q. On this same piece of waterfront?

A. Well, it wasn't direct in front of that; it was a little at one side. [285—245]

Q. On which he landed his scow and from which he discharged it? A. Yes.

Q. How many years have you lived here, Mr. Scott—were you here in 1900?

A. I was; I came here in '98.

Q. Well, from the year 1900 down to the summer of 1912, how much of the time were you in Juneau?

A. All of the time in the summer months.

Q. What was your occupation during that time?

(Testimony of John R. Scott.)

A. I followed the business of carpenter and contractor.

Q. During that time, from 1900 up, from and including 1900 to the month of August, 1913, what do you say as to whether or not Mr. James used this particular piece of waterfront in controversy for the purpose of landing scows and discharging lumber over it?

A. Why, I have seen his scows there occasionally. I never saw anyone else using it.

Q. Now, when you say occasionally, you mean when you have been down there you have seen his scows on the ground, is that what you mean?

A. Yes.

Mr. BAYLESS.—We object to the question as leading and move to strike the answer.

The COURT.—Yes, it is quite leading, Judge Gunnison.

Mr. BAYLESS.—Does your Honor strike the answer?

The COURT.—No, I didn't strike the answer.

Mr. GUNNISON.—I will endeavor not to lead the witness.

Q. Did you see Mr. James use that small structure on which you say he rested the ends of his scows while you were down there? [286—246]

Mr. BAYLESS.—We object to that as suggestive.

Q. (By Mr. GUNNISON.) Did you build one of the—I will withdraw that—state, if you know, how many approaches there are to the present gridiron on this ground? A. Two.

(Testimony of John R. Scott.)

Q. Did you have anything to do with the construction of either of those? A. I built one.

Q. Which? A. The one toward the sawmill.

Q. The one towards the sawmill—in what year, Mr. Scott, approximately?

A. 1912, I think it was.

Q. Who paid you for it? A. Mr. James.

Q. Do you know how long that platform which you built stood? A. No, I don't.

Q. Do you know whether or not it was standing in the spring of 1906?

A. I don't think all of it was there.

Q. Well, was it in condition to be used?

A. No, I wouldn't say it was.

Q. Are you able to say whether or not the present gridiron is a reconstruction of that platform or whether it is a different structure?

A. It is a different structure.

Q. Are you able to state whether or not it has in it any of the timbers or whether it stands upon the foundation of the other structure, the one you built?

A. It has no timber in it that was in the structure that I built.

Q. Either foundation or substructure. [287—247] A. Nothing whatever.

Mr. GUNNISON.—That is all.

Cross-examination.

(By Mr. BAYLESS.)

Q. Did you build both of these gridirons?

A. I didn't build either one of them.

Q. You did not build either one of them?

(Testimony of John R. Scott.)

A. I didn't build either one of them.

Q. What did you have to do with the old gridiron?

A. I didn't have anything to do with it.

Q. You call it a little wharf?

A. I call it a wharf.

Q. Platform? A. Platform.

Q. Who built that? A. I built that.

Q. You didn't build this other gridiron?

A. No, I had nothing to do with it.

Q. Do you know who did build it? A. No.

Q. Did you see it being built? A. No.

Q. Have you examined it recently?

A. Not particularly, no.

Q. How big was that old platform?

A. Well, I can't say what the dimensions was.

Mr. GUNNISON.—We object to this as not proper cross-examination. We didn't go into the construction of that at all. [288—248]

The COURT.—You asked him about it.

Mr. GUNNISON.—I asked him if he constructed it merely for the purpose of laying a foundation.

The COURT.—You asked him about it—on direct examination you had him locate it. Now, on cross-examination, certainly he can be asked a little more about it to ascertain whether he knows about it.

Q. (By Mr. BAYLESS.) How big was that old platform, Mr. Scott?

A. Why, I couldn't say as to the exact dimensions. I had four rows of piles one way and five the other, with caps across them.

Q. How long would that make it?

(Testimony of John R. Scott.)

A. Make it approximately forty feet perhaps.

Q. And how wide?

A. Twenty-four or thirty, somewheres around that, I don't remember.

A. Well, now, just describe this old platform to the Court.

The COURT.—Well, now, Mr. Bayless, I allowed you to go far enough to show what platform he was talking about, but now you are going into the details of the construction of the platform, which was introduced merely for the purpose of fixing a location—the location of this gridiron. I think the objection would be well taken that it is not cross-examination.

Q. (By Mr. BAYLESS.) Mr. Scott, was there any other structure on the ground when you built that platform?

A. Not on that particular spot, no.

Q. Whom did you build that gridiron or that old platform for?

Mr. GUNNISON.—We object to that as not proper cross-examination—part of their rebuttal, your Honor.

The COURT.—I don't know whether he testified to who he built it for on direct examination or not.

Mr. GUNNISON.—No, sir, I didn't ask him about that.

The COURT.—I will allow you to ask him that question. [239—249]

Q. (By Mr. BAYLESS.) Whom did you build that platform for, Mr. Scott? A. Mr. Davidson.

(Testimony of John R. Scott.)

Q. Charles E. Davidson? A. Yes.

Q. Did Mr. James occupy this old platform after you built it? A. Not that I know of.

Q. Do you know who occupied it?

A. The Perseverance people *had there* sometime.

Q. Did you see anyone besides the Perseverance Mining Company, or its agents, using that platform?

A. No.

Q. How long did that platform remain in its position on the ground?

A. Why, that season and part of the winter. I think the ice uprooted the piles, most of them, bent them crooked.

Q. Was it a substantial structure?

A. I wouldn't call it a substantial structure. The piles were set in the ground with the exception of two rows.

Q. Where, with reference to the present gridiron, was the old platform?

A. Very near in front of it.

Q. How close to it in feet would you say it was?

A. It must be very near the outer edge of the bent. It was, I should say, very near the front of the present gridiron.

Q. Very close to it? A. Very close to it.

Q. Was this old platform on the uplands or on the tidelands? A. On the tide.

Q. The tide ebbed and flowed under this platform?

A. It did, yes.

Q. And scows were landed on that platform?

(Testimony of John R. Scott.)

A. No, the scows were landed on the beach and the lumber was piled off onto the platform from the scow.

Q. What did the scows rest on?

A. Rested on the ground.

Q. On the beach? A. On the beach.

Q. There was no structure on the beach, embedded in the beach, for these scows to rest on at that time?

A. No.

The COURT.—Are you talking of the scows before the gridiron was built?

Mr. BAYLESS.—Before Mr. James' gridiron was built.

Q. You spoke, I think, about there being some bents embedded in the beach which were used to rest scows on? A. Yes.

Q. Just describe that to the Court.

A. That was on the lower end toward the sawmill.

Q. How far from the old platform was that structure?

A. Possibly eight or ten feet, something like that, approximately.

Q. Did you ever see scows landing there while the old platform was standing?

A. A scow-load of lumber discharged there while I was building—while I was at work there.

Q. Did you ever see scows landing there and discharging on this platform? A. Yes.

Q. Do you know whose scows they were?

A. No, I don't. The lumber came from the Wrangell sawmill.

Q. And was landed on this structure on the beach

(Testimony of John R. Scott.)

and unloaded onto this old platform?

A. They weren't landed on no structure; there was no structure in front of that platform; they sat in the water until they [291—251] was unloaded or on the beach.

Q. Just what was this old structure which was about eight feet from the old platform?

A. There were some benches put in there to hold the back end of the scow up level when the tide went out.

Q. Well, I don't exactly understand what those benches were or bents—what do you mean by that?

A. I mean—you may call it a gridiron or structure—anything to hold the end of the scow up—piles set in the ground or driven in, with caps across them, probably they were three feet off the ground on one end.

Q. For scows to sit on—acted for the same purpose as this gridiron?

A. Acted for the same purpose, yes.

Q. And that gridiron was about eight feet from the platform you built? A. Something like that.

Q. Did you ever see any lumber from Wrangell laid on this gridiron? A. No.

Q. You did not. Do you know where the Wrangell lumber was landed?

A. It was landed on the platform I built.

Q. Do you know whether or not Mr. James had anything to do with landing any of the Wrangell lumber on this platform? A. No, I don't.

Q. Did you ever see Mr. James on the ground while

(Testimony of John R. Scott.)

any of this lumber was landed on the old platform?

A. What, the Wrangell lumber?

Q. Yes.

A. I don't remember about that. He might have been around and might not; I don't know. [292—252]

Q. Do you remember ever seeing any of Mr. James' agents or employes there while the Wrangell scows were discharging on this old platform?

A. Not that I know of.

Q. Did you ever see Mr. James' scows on the beach in front of this old platform?

The COURT.—At which time?

Mr. BAYLESS.—During any time that the platform was standing.

A. I don't know; I don't remember. I don't know what he would be doing there unless he was unloading lumber off the platform. I don't know—I never saw that.

Q. You never saw Mr. James do that and how long did this old platform stand, Mr. Scott?

A. I don't really know. It was partly demolished the next spring, next summer, early in the spring rather.

Q. Was it used in the summer of 1906 at all do you know? A. Not that I know of.

Q. When was the present gridiron built, do you know? A. I don't know.

Q. You didn't build it? A. No.

Q. You had nothing to do with it? A. No.

Q. Know nothing about it?

(Testimony of John R. Scott.)

A. No; just know it is there.

Q. And the present gridiron stands just a little to the seaward of the old platform? A. Yes.

Q. Were you here while the Perseverance Mill was being constructed—do you know what year it was?

A. I don't recall—I must have been here. I was here before there [293—253] was any Perseverance.

Q. Do you know whether or not the mill was being built in the summer of 1905?

A. I don't remember about that.

Q. Do you know what this lumber from Wrangell was used for.

Mr. GUNNISON.—We object to that as irrelevant, incompetent, and immaterial.

A. I don't.

Mr. GUNNISON.—And not proper cross-examination.

The COURT.—Objection sustained.

Q. (By Mr. BAYLESS.) Where were you in the summer of 1900, Mr. Scott?

A. I was here in Juneau.

Q. What was your work then?

A. I was working for the Last Chance Company up here in the Basin.

Q. Were you acquainted with this piece of property in dispute at that time?

A. I knew it was there.

Q. Did you have occasion to go down on the spot where Mr. James' gridiron is now, in 1900?

A. I was passing by there to and from the sawmill.

Q. The Jorgenson sawmill?

(Testimony of John R. Scott.)

A. Jorgenson sawmill—I think it was about that time that he built his mill there.

Q. Is there any event which occurred about that time which would fix the date in your mind, Mr. Scott, so that you could tell whether it was actually the summer of 1900 or not?

A. No, I couldn't say for sure.

Q. Well, can you swear positively that you know anything about this property in 1900 or whether or not Mr. James used it in any way in 1900?

The COURT.—How is that cross-examination, Mr. Bayless? [294—254]

Mr. BAYLESS.—As I understood it, on direct examination Mr. Scott testified that from 1900 to August, 1913, Mr. Scott has been here each summer and during that time no one else has occupied that ground except Mr. James.

The COURT.—I remember some testimony to that effect, but I thought he said from 1905.

Mr. GUNNISON.—I did mention back to 1900, summer of 1900.

The COURT.—Very well, proceed with your cross-examination.

A. Mr. James used the ground in 1900. I had occasion to buy lumber from Mr. James in that year.

Q. (By Mr. BAYLESS.) What time in that year? A. In the summer-time some time.

Q. What did you do with the lumber you got?

A. How is that?

Q. How much lumber and what was the kind and what did you use it for?

(Testimony of John R. Scott.)

Mr. GUNNISON.—We object to that as being multifarious.

The COURT.—Objection overruled.

Mr. GUNNISON.—Three questions in one.

The COURT.—Yes, but so intimately and closely connected.

Mr. GUNNISON.—Exception.

A. As to the quantity I couldn't say; the kind, why it was such as people built buildings out of—dimension stuff, some boards, some timber, and scantling used to build a barn, chicken barn, and a fence.

Q. (By Mr. BAYLESS.) Whereabouts, Mr. Scott?

A. On my lot the most of it.

Q. That was in the summer of 1900?

A. In the summer of 1900.

Q. Was the Jorgenson sawmill operating at that time?

A. I don't think it was just then. I don't know; I don't remember. [295—255]

Q. Was the sawmill built at that time?

A. I don't think it was built.

Mr. GUNNISON.—We object to the question on the ground that it is not proper cross-examination, irrelevant, incompetent and immaterial.

The COURT.—Objection overruled.

Q. (By Mr. BAYLESS.) And you say that this lumber was brought over to you in the summer of 1900 in that way?

A. No, I didn't say so.

Q. Brought over from Mr. James' sawmill by Mr. James?

(Testimony of John R. Scott.)

A. No, I landed it there myself. I bought the lumber from James.

Q. And you brought it over in your own scow?

A. How?

Q. How was it brought over from Douglas?

A. I didn't bring it from Douglas. I brought it from Sheep Creek—brought in a raft. You asked me to fix any kind of a point whereby it would be definite that Mr. James occupied that ground. I mentioned that part as a sure instance why I knew he occupied the ground in 1900 and you brought me along about this fence and chicken coop.

Q. Did Mr. James bring this lumber up from Sheep Creek? A. No, I brought it up myself.

Q. And where did you land it?

A. Somewheres about that same place.

Q. Do you know whether it was on the exact spot where the gridiron is now?

A. It might not have been on the exact spot, but it was somewheres near there. That was about the only place a team could get to it.

Q. Can you fix a place with any definiteness?

A. No, I don't suppose I can.

Q. Was there a structure on the beach at that time? A. I don't remember. [296—256]

Q. Do you know whether or not Mr. James had any structure on the beach during the summer of 1900?

A. I don't know whether he did or not.

Q. How much ground did you occupy, Mr. Scott, in unloading your raft in 1900?

A. The size of the raft?

Q. How big was the raft?

(Testimony of John R. Scott.)

A. I don't remember that I measured it. It was large enough to hold the amount of lumber it contained.

Q. How much lumber did it contain?

A. I don't know as to the amount.

Q. Did Mr. James come up with you that time?

A. No.

Q. You bought the lumber at Sheep Creek and brought it up and landed it on the beach? A. Yes.

Q. Did you know whether or not Mr. James claimed that ground there at that time?

A. At that time?

Q. Yes.

A. No, I didn't know anybody claimed it.

Q. Do you know the size of the old Carroll-Murray wharf site property.

Mr. GUNNISON.—We object to that question as irrelevant, incompetent, and immaterial, and not proper cross-examination.

The COURT.—The size of what?

Mr. BAYLESS.—The old Carroll-Murray wharf property.

The COURT.—Objection sustained.

Q. (By Mr. BAYLESS.) Did you see Mr. James occupying the property in controversy in the summer of 1900 except as you have testified?

A. I couldn't say, I don't remember. [297—257]

Q. In 1901, Mr. Scott, where were you?

A. I was working for the Last Chance Company in the Basin.

Q. Were you acquainted with the property in dispute at that time?

(Testimony of John R. Scott.)

A. Same as I was the year before; just knew the ground was there.

Q. Did you know whether anybody occupied that ground in 1901?

A. Only as Mr. James occupied it with bringing lumber over from Douglas.

Q. Did you see Mr. James bring any lumber over from Douglas in 1901? A. Yes.

Q. What time? A. In the summer.

Q. How many times? A. Several times.

Q. One or two, or more than that?

A. Yes, a good many times.

Q. How was this lumber brought over?

A. Brought over in scows.

Q. In scows in 1901. How frequently were you on the beach, on this spot, in the summer of 1901?

A. As I happened to pass along down there.

Q. How frequently did you have occasion to pass down there? A. Not very often.

Q. About how often during the summer?

A. Oh, I don't know how many times during the summer.

Q. Did you see Mr. James landing any lumber over there in the winter of 1901?

A. No, I wasn't down there in the winter.

Q. Well, were you working in town in the summer of 1901? A. I was working in the Basin.

Q. And how frequently did you come to town during that summer from the Basin—how frequently did you come down from the Basin to Juneau during the summer of 1901?

(Testimony of John R. Scott.)

A. I am talking about Gold Creek Basin. I lived here in town and [298—258] worked up in the Basin.

Q. And you worked up in the Basin?

A. In 1900 and 1901 and part of 1902 I was working. I was using lumber at different times from Mr. James' sawmill at Douglas.

Q. Did you have occasion to go down on the beach to get that lumber? A. No, I never did.

Q. What occasion did you have to go down on the property in 1901?

A. Same occasion as any one would.

Q. For business or pleasure?

Mr. GUNNISON.—We object to that as incompetent, irrelevant, and immaterial.

Mr. BAYLESS.—Whether he was down there for business or pleasure.

The COURT.—Objection overruled.

A. It might be both.

Q. Did you have any particular reason to observe whether Mr. James was landing lumber there or not?

A. No, I didn't.

Q. How do you recollect that he did?

A. I see him.

Q. You have seen Mr. James himself?

A. I have seen Mr. James himself on the scows there occasionally.

Q. In 1901?

A. I don't know as it was 1901; I know he was there sometimes in 1901.

Q. Have you any way of definitely fixing it so you

(Testimony of John R. Scott.)

can swear positively that it was the year 1901 instead of 1900, or 1902? I am not trying to confuse you—I am merely trying to find out whether you really know whether he was occupying the beach in 1901. If you can swear positively about that, that is all that is necessary.

A. I am not sure as to the year, but I think it was 1901. [299—259]

Q. You wouldn't pretend to swear positively?

A. It was either in 1901 or 1902.

Q. And you merely saw him over there occasionally and occasionally during that summer?

A. It was only occasionally I seen him—I wasn't there, I was busy.

Q. Were you doing any business with Mr. James in 1901? A. Not that I remember of.

Q. Doing any business in 1900?

A. Well, I don't know as 1900; it was 1900 or 1901 that I bought the lumber; I have forgotten what year.

Q. Do you know whether or not Mr. James had any stakes on the beach that would indicate that he claimed a certain tract of ground there?

Mr. GUNNISON.—We object to that as irrelevant, incompetent, and immaterial, and not proper cross-examination.

The COURT.—I don't see how it is cross-examination.

Q. (By Mr. BAYLESS.) Do you know whether or not these rafts were landed in the exact spot that the gridiron is now, in 1900 or 1901?

A. No, I don't.

(Testimony of John R. Scott.)

Q. Might have been this side or might have been the other side?

A. It might have been, but it couldn't be far away on either side.

Q. Were those rafts always landed in the same spot? A. Pretty much.

Q. Were there any rafts landed there in 1901, rafts of lumber from Douglas?

A. What do you mean by rafts of the lumber—do you mean scows or rafts?

Q. Just rafts.

A. I don't remember as to that, rafts.

Q. You don't know whether or not he landed rafts or scows? A. Not at that time, no. [300—260]

Q. Well, Mr. Scott, in 1903 where were you?

A. I think in 1903 I was working for the city.

Q. Do you know whether or not Mr. James landed any scows or rafts there during that year?

A. Why, I used to see lumber come over there occasionally landed down there somewhere.

Q. In 1903? A. Yes.

Q. Are you sure it was 1903?

A. I am quite sure it was 1903; I was working for the city.

Q. Summer or winter of 1903?

A. Both; mostly in the summer.

Q. Was there any structure on the ground at that time, in 1903? A. I don't know.

Q. How frequently would you say these scows or rafts landed there?

A. Oh, I don't know as to that—whenever I hap-

(Testimony of John R. Scott.)

pened to notice them. In 1903 I was all around the beach there.

Q. Did Mr. James land lumber at any other spot than upon the property in dispute?

A. I don't know; I never saw him.

Q. Did you ever see any one else land on that piece of property? A. No.

Q. Did you ever see any fish boats anchored there?

Mr. GUNNISON.—We object to that as not proper cross-examination—he is talking about anchoring.

Mr. BAYLESS.—Laid up on the beach, I meant.

A. Not on that spot.

Q. Did you ever see any Indian canoes laid up on the beach there?

A. I expect likely Indians and any one else—

The COURT.—Just a moment. Before I had an opportunity [301—261] to rule on that last question another one was asked. Now a question is asked which raises the same question that was in the other and it is not objected to.

Mr. GUNNISON.—I thought your Honor had overruled the objection.

The COURT.—I did not overrule it.

Mr. GUNNISON.—Well, I desire to interpose the same objection.

The COURT.—How is that cross-examination?

Mr. BAYLESS.—Mr. Scott has testified that Mr. James occupied the beach.

The COURT.—Yes, but he didn't testify that nobody else used it.

(Testimony of John R. Scott.)

Mr. BAYLESS.—I beg your pardon, I think he did.

The COURT.—Not in the examination in chief.

Mr. BAYLESS.—I have a note here: “To 1913 no one occupied the ground but James.”

Mr. GUNNISON.—That is my recollection of it.

The COURT.—Then your objection is not well taken.

Mr. GUNNISON.—My objection is to anchoring of boats in front of there.

The COURT.—Objection overruled.

Q. (By Mr. BAYLESS.) Did you ever see any boats laid up on the beach where the gridiron is now at any time from 1900 to 1913? A. I don't know.

Q. Are you able to say whether that beach was always claimed up to the time you built the platform and that nobody had ever occupied it except Mr. James?

A. I am not able to say anything like that or whether there was anything there at any time or not.

Q. You are not prepared to say, Mr. Scott, that no one used this [302—262] beach besides Mr. James from 1900 to 1913?

A. To my knowledge is what I said before, I never saw anyone occupy it.

Q. Did you ever see any boats land up there?

Mr. GUNNISON.—Object to that as being a repetition.

The COURT.—Objection overruled.

A. Why boats couldn't land in there in front of that gridiron.

(Testimony of John R. Scott.)

Q. (By Mr. BAYLESS.) I will call your attention to this fact, Mr. Scott. You know in the winter times and other times and at various places around this beach, fishing boats lay up for repairs—to be painted and for other purposes. Did you ever see any fish boats laid up for repairs or beached where the gridiron is now? A. No, not that I know of.

Q. Did you ever land rafts of lumber there yourself except on one occasion? A. No.

Q. After this platform was built, did you ever see Mr. Davidson occupying the platform?

A. I don't know as I can answer that, because I don't know anything about Davidson's business, whether he was occupying it or whether it was someone else. It was occupied that summer for lumber that was brought from the Wrangell sawmill.

Q. So somebody else did occupy it from 1900 to 1913 besides Mr. James?

A. That summer, yes; that was in 1905.

Q. In 1905 it was used by the Perseverance people or by Mr. Davidson?

A. Davidson is the only one I know of. The Perseverance people occupied it some—they paid me for repairs on the wharf there that same summer, I think it was in the fall.

Q. Who paid you? [303—263]

A. The Perseverance folks.

Q. Did they pay you for erecting that old platform—did the Alaska Perseverance Mining Company pay you for your services in erecting the old platform?

A. No.

(Testimony of John R. Scott.)

Q. Who paid you? A. Davidson.

Q. And the Perseverance Company paid you for certain repairs you put on the platform after it was built? A. Yes.

Q. Do you know whether or not Mr. James occupied this platform during the summer of 1905?

A. I have already said three different times that I never saw Mr. James occupying it at any time.

Q. The old platform?

A. That old platform. I don't know that he occupied it at any time.

Q. Did you see Mr. James landing scows on the beach, on the old platform, in the summer of 1905?

A. Yes.

Q. How frequently?

A. He landed there—one there while I was building those benches.

Q. And he landed it on this little old gridiron which was in front?

A. Well, it wasn't in front—it was a little to the side there, and yes, he landed it.

Q. Do you know what became of the lumber that was landed at that spot?

A. Carted it up town there somewheres. The teams hauled it away.

Q. Was there any time you saw Mr. James landing lumber there in the summer of 1905?

A. Why, I don't recall any particular time.

Q. Did you see Mr. James himself unload this lumber which you have [304—264] testified as having been unloaded while you were building the old plat-

(Testimony of John R. Scott.)

form? A. Unloading it himself?

Q. Himself, yes. A. No, I don't think so.

Q. Was he present on the ground?

A. He was present once that I know of on the ground.

Q. What was he doing at that time?

A. The same as any business man would be doing.

Q. What is that, Mr. Scott?

A. Looking around, rubber-necking around, seeing what other people is doing.

Q. Was he doing anything on the ground?

A. No work, only perhaps he might be telling someone else what to do.

Q. Did you have any conversation with him at that time? A. Not particularly.

Q. Do you know what he was doing on the ground?

A. No, I don't know what he was doing there.

Q. Do you know whether or not he had anything to do with landing of the lumber there—do you or not?

A. Only so far as I know it came from the saw-mill over there on the island.

Q. Do you know whether it came from that saw-mill or the Wrangell sawmill?

A. I know it came from Douglas Island.

Q. Well, that is once; did you ever see Mr. James more than once on the ground during the summer of 1905? A. I don't remember how many times.

Q. Was Mr. James there while you were building this platform? A. Yes.

Q. And he saw you build it?

(Testimony of John R. Scott.)

A. Yes. [305—265]

Q. Did you have any conversation while you were building this platform?

A. Oh, same as one—anybody to talk to another.

Q. Did he order you not to build this platform?

A. No.

Q. Did he say anything to you about discontinuing that work? A. No.

Q. The rafts or the scows which came from Wrangell loaded with lumber for the Perseverance were landed right there in front of this old platform?

A. Yes.

Q. They were landed on the same spot where the gridiron is now? A. Pretty much; yes.

Q. Do you know whether or not Mr. James saw that done or not?

Mr. GUNNISON.—Object to that question on the ground that it is irrelevant, incompetent and immaterial, and not proper cross-examination.

The COURT.—I don't see how it is cross-examination.

Mr. BAYLESS.—Very well, sir.

Q. Did you set these piles in 1905 yourself, Mr. Scott? A. Yes, I did.

Q. Did anybody else drive any piles—assist you?

Mr. GUNNISON.—We object to that as irrelevant, incompetent and immaterial.

The COURT.—Driving what?

Mr. BAYLESS.—Driving piles.

Mr. GUNNISON.—I think he has already gone over that.

(Testimony of John R. Scott.)

The COURT.—No, I think you may answer that question.

Mr. GUNNISON.—We didn't go into the matter of form of construction.

Q. (By Mr. BAYLESS.) Did anybody drive any piles for you? A. Yes. [306—266]

Q. Who was that? A. Webster.

Q. How many piles did Webster drive?

A. Eight.

Q. Where were those piles situated?

A. The two front rows.

The COURT.—Well, that is far enough, Mr. Bayless.

Q. (By Mr. BAYLESS.) Mr. Scott, since the gridiron has been built, the one now occupied by Mr. James, have you seen anyone else land stuff, materials or supplies, on that gridiron besides Mr. James?

A. No, not that I know of.

Q. How often have you seen Mr. James land stuff on this present gridiron since it has been built?

A. I couldn't say as to that, quite often.

Q. Can you say how many times a year you have seen it? A. No.

Q. More than a few times, or just give me some idea as to how often you have seen it done, Mr. Scott?

A. I don't know how often they used it. I have noticed scows there.

Q. Did you notice anybody else's scows except Mr. James'? A. I never did.

Q. Did you build the approach toward town?

(Testimony of John R. Scott.)

A. No.

Q. You had nothing to do with that? A. No.

Q. Did you build the other approach? A. Yes.

Q. That was done in 1912, was it? A. Yes.

Q. Do you know when the street was completed from the Juneau Iron [307—267] Works down to the sawmill?

A. I don't remember when it was built; I think in six, seven—six probably.

Q. 1906. Well, was Mr. James' gridiron built before this street was planked or afterwards?

A. I don't remember; I don't know whether or not that particular gridiron was built.

Q. Was the street planked through there before they built the old platform? A. No, it wasn't.

Q. Do you know whether or not in the summer of 1906 the street was built?

A. No, I don't remember.

Mr. BAYLESS.—That is all.

Redirect Examination.

(By Mr. GUNNISON.)

Q. Do you know whether the street as it now stands covers at least a portion of the ground on which the old platform stood?

A. I think it does; I am not sure.

Q. Now, I understood you to say that during the summer of 1901 and 1902, or during all the time from 1900 up to the present, you have lived in town when you haven't been out of the country? A. Yes.

Q. And even when you were working in the Basin that you lived in town? A. Yes.

(Testimony of John R. Scott.)

Q. Now, which Basin was it you were working in, the Last Chance or the Perseverance Basin?

A. The Last Chance. [308—268]

Q. And what was that Last Chance—who furnished the lumber that went into the Last Chance Basin?

Mr. BAYLESS.—Object to that as irrelevant, incompetent and immaterial.

Mr. GUNNISON.—Counsel brought that out.

Mr. BAYLESS.—Not to my knowledge, I didn't. I was talking about lumber that went into the Perseverance mill.

The COURT.—Objection overruled.

Q. (By Mr. GUNNISON.) Who furnished the lumber that went into the Last Chance flume?

A. Mr. James.

Q. Where was it landed, if you know?

Mr. BAYLESS.—Same objection.

The COURT.—Same ruling.

A. I don't know as to that.

Q. Do you know where it was landed here?

A. No, I don't. It was brought to me on teams. The people told me it came from James. I used to see James on the job occasionally.

Mr. BAYLESS.—We move to strike the last part of the answer on account of its being hearsay and not responsive.

The COURT.—The last part of his answer was that he used to see Mr. James on the job occasionally—that isn't hearsay.

Mr. GUNNISON.—Of course, the other part—

(Testimony of John R. Scott.)

that they told him—is hearsay.

Q. During that time you were employed in the Last Chance Basin did you, or did you not, see lumber from the James mill land on this tract in controversy?

A. I am not sure that I—I am not sure that I saw it landed.

Q. I don't mean lumber for the Last Chance, but I mean did you see any lumber from the James mill land on this piece of ground during that time; I thought you testified to that? [309—269]

A. I don't remember.

Q. Did you see any lumber from the James mill landed on that ground in the summers of 1901 or 1902, either year, 1901 or 1902?

A. Why, the scows used to land there and were unloaded there, and brought up town.

Q. How many rafts have you seen in there during the year—did you see in there during the year?

A. I couldn't say.

Q. More than one? A. Yes, more than one.

Q. Has there been any year since 1900 that you haven't seen more than one scow in there where scows with lumber from the James' mill landed?

A. Not that I know of.

Mr. GUNNISON.—That is all.

(Witness excused.) [310—270]

The COURT.—Have you any other witnesses than Mr. Ewing, Mr. Bayless?

Mr. BAYLESS.—Mr. Ewing and Mr. Dautrick.

The COURT.—Let the record show that the plain-

(Testimony of John R. Scott.)

tiff is permitted to introduce Mr. Dautrick and Mr. Ewing as witnesses in chief to show acts of dominion and ownership exercised on the premises in dispute, irrespective of transactions in which Mr. James himself is concerned—transactions with Mr. James.

Mr. GUNNISON.—To which we object.

The COURT.—To which the defendant objects and exception is allowed.

[**Testimony of A. S. Dautrick, for Plaintiff.**]

A. S. DAUTRICK, a witness called and sworn in behalf of the plaintiff, it having been permitted to reopen its case in chief by the Court, testified as follows:

Direct Examination.

(By Mr. BAYLESS.)

Q. State your name? A. A. S. Dautrick.

Q. Your residence? A. Juneau.

Q. And your occupation?

A. Agent of the Great Northern Railway.

Q. When did you first come to Juneau, Mr. Dautrick?

A. '98. I went away, then, however, and came back in 1901.

Q. You resided in Juneau in 1901? What was your business then?

A. I was agent for the Pacific Coast Company from September, 1901, to September, 1903.

Q. Whom did you succeed as agent?

A. H. F. Robinson. [311—271]

Q. How long had Mr. Robinson been agent?

(Testimony of A. S. Dautrick.)

Mr. GUNNISON.—We object to that as irrelevant, incompetent and immaterial.

The COURT.—I don't see what that has to do with it, Mr. Bayless.

Q. (By Mr. BAYLESS.) What were your duties as agent of the Pacific Coast Company?

A. Well, I had charge of the Pacific Coast Company's property and coal business and was agent for the Pacific Coast Steamship Company in their transportation business.

Q. When you became the agent of the company, what, if anything, was done with reference to transferring to you the supervision of the company's property here in Juneau?

Mr. GUNNISON.—We object to the question on the ground that it is irrelevant, incompetent and immaterial, and too indefinite. The only property claimed by the company is the property which is in controversy here.

The COURT.—Well, of course, if it doesn't include the property in controversy, it would not be material. Objection overruled.

A. Why, such general acts as always take place when transferring an agency. The property was pointed out to me and the boundary lines of the real estate and it was shown which property belonged to the Pacific Coast Co. and what the manner of handling had been—general transfer.

Q. (By Mr. BAYLESS.) Are you acquainted with the old Carroll-Murray Wharf Site property?

A. Yes, sir.

(Testimony of A. S. Dautrick.)

Q. When did you first become acquainted with that property?

A. When I first came to Juneau, but became intimately acquainted with it when I became agent.

[312—272]

Q. Was that part of the property that was transferred to you by the other agent? A. Yes, sir.

Mr. GUNNISON.—We object to that question as leading.

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception.

A. Yes, sir.

Q. (By Mr. BAYLISS.) Are you acquainted with the property in dispute between the Pacific Coast Company and Mr. James in this case?

A. Yes, sir.

Q. Is that property a portion of the Carroll-Murray wharf site?

Mr. GUNNISON.—Same objection.

The COURT.—That objection will be sustained. You may ask him whether that was turned over to him.

Q. (By Mr. BAYLESS.) Was that piece of property turned over to you?

Mr. GUNNISON.—We object to that question on the ground that it is too indefinite—that piece of property.

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception.

A. Yes, sir.

Q. (By Mr. BAYLESS.) That is to say, the

(Testimony of A. S. Dautrick.)

piece of property in dispute in this case was turned over to you by Mr. Robinson? A. Yes, sir.

Mr. GUNNISON.—We object to the question as leading.

The COURT.—The question has been answered now.

Mr. GUNNISON.—Well, we move to strike it.

The COURT.—The motion will be denied.

Q. (By Mr. BAYLESS.) Mr. Dautrick, what, if anything, did you do during the time you were agent of this property, agent of the company, with reference to this particular piece of property?

The COURT.—In dispute?

Mr. BAYLISS.—In dispute in this action.

[313—273]

A. I don't believe I quite got that.

Q. Did you have supervision of this property in dispute while you were agent?

Mr. GUNNISON.—We object to that question as leading and suggestive and a repetition.

The COURT.—Objection sustained. Your first question was: "What, if anything, did you do."

Q. (By Mr. BAYLESS.) What, if anything, did you do with reference to this property while you were agent?

A. Nothing particularly. There was not much to do.

Q. What was the situation on the ground at that time?

A. Well, the property was just about as it is now with the exception of that gridiron, and occasionally

(Testimony of A. S. Dautrick.)

small boats would come in there and use that beach and a raft of lumber would be brought in or a scow of lumber once in a while.

Q. Do you know who occupied this beach during the time you were agent?

A. Nobody occupied it in any permanent way. It was used by comers and goers for their boats and rafts—sort of a—well, they just went upon it because it was a convenient place to go I suppose is the right way to explain it.

Q. Did you have any instructions from the company with reference to supervising this piece of property?

Mr. GUNNISON.—We object to that as irrelevant, incompetent, and immaterial, calls for a conclusion of the witness and is not the best evidence.

The COURT.—The question is objectionable because it is hearsay and not binding on the defendant.

Mr. BAYLESS.—The objection will be sustained?

The COURT.—Yes.

Q. (By Mr. BAYLESS.) Did you do anything towards preventing anyone [314—274] from using this beach while you were agent?

Mr. GUNNISON.—We object to the question as irrelevant, incompetent, and immaterial, leading and suggestive.

The COURT.—The objection is sustained on the ground that it is leading.

Q. (By Mr. BAYLESS.) What, if anything, did you do towards permitting anyone to occupy this beach while you were agent?

(Testimony of A. S. Dautrick.)

A. Why, the only—occasionally people wanted to use that beach down there and I don't know that I did anything particularly—the only specific instance I know of I gave Gus Messerschmidt permission to land a load of wood there.

Q. Do you know what time that was?

A. I think it was in the fall of 1901; it was either 1901 or 1902.

Q. Do you know whether or not Mr. Messerschmidt occupied this particular piece of tide lands for landing his wood there?

A. My judgment is it was the same piece, same place.

Q. Did Mr. Messerschmidt use the beach for that purpose?

Mr. GUNNISON.—We object to the question as leading, suggestive—what he did—and that it is a conclusion.

The COURT.—The status of this witness should be thoroughly understood. This is your examination in chief. You are now asking him whether or not they permitted Mr. Messerschmidt to occupy it.

Mr. BAYLESS.—Yes.

The COURT.—How does that go to assist your case one way or the other?

Mr. BAYLESS.—Isn't that an act of ownership?

The COURT.—Not that Mr. James has anything to do with one way or the other.

Mr. BAYLESS.—This is irrespective of Mr. James—it is a circumstance to indicate that we claimed the property at that [315—275] time and

(Testimony of A. S. Dautrick.)

were acting as the owner of it.

Mr. GUNNISON.—No adverse holding of Mr. James though.

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception. We object to that question “If he used it for that purpose” as leading and suggestive and calling for a conclusion of the witness. If he asks what Mr. Messerschmidt did pursuant to that permission, we don’t object to that.

The COURT.—I don’t think it makes any difference what Mr. Messerschmidt did in pursuance to that permission. The question is whether you exercised ownership—that whatever Mr. Messerschmidt did was by permission of the company. What he did or how much he occupied I don’t think is material. Your own theory is to show that you had supervision of the matter and in pursuance of that you gave permission to Mr. Messerschmidt. What he did—how much of it he used—I don’t see how that is material.

Mr. BAYLESS.—I would like to show acts of ownership, if the Court please.

The COURT.—An act of ownership isn’t what he did, but it is your giving the permission.

Mr. BAYLESS.—I would also like to show acts of actual occupation by our tenants.

The COURT.—If you propose to show that it was by your tenants, it would be a different proposition.

Mr. BAYLESS.—That is the purport of this.

The COURT.—You claim that Mr. Messerschmidt was your tenant?

(Testimony of A. S. Dautrick.)

Mr. BAYLESS.—Our permittee.

The COURT.—You have already shown that.

Mr. BAYLESS.—And for that reason I would like to show that pursuant to that permission he became our tenant. [316—276]

Q. (By Mr. BAYLESS.) Mr. Dautrick, what, if anything, did Mr. Messerschmidt do pursuant to that permission given by you to him?

A. Why, he had a load of wood brought in there and piled on the beach.

Q. Was that wood—where, with reference to high and low tide, was that wood placed?

A. I should say that some of it was on the beach, on the upper beach and some on the bank; that would be my recollection.

Q. How did Mr. Messerschmidt get to the beach to use it for that purpose?

Mr. GUNNISON.—We object—well, I will withdraw the objection.

The COURT.—It seems to me you are going too far, Mr. Bayless. I don't understand how it is material one way or the other.

Mr. BAYLESS.—May I make a statement?

The COURT.—Certainly.

Mr. BAYLESS.—I propose to show that Mr. Messerschmidt used part of the uplands and part of the tide lands; that he landed his wood right over the tide lands in dispute, and that he came in there in that way.

The COURT.—By your first question you asked him where he landed the wood. How he got to the

(Testimony of A. S. Dautrick.)

wood afterwards—what has that got to do with it?

Mr. BAYLESS.—I wanted to show that Mr. Messerschmidt unloaded his wood on this piece of tide lands and stacked it up partly on the upland and partly on the tide land.

The COURT.—He has already testified to that.

Mr. BAYLESS.—I wasn't aware of that.

The COURT.—Why certainly.

Q. (By Mr. BAYLESS.) What, if any, other acts of ownership or supervision did you exercise with reference to this property [317—277] while you were the agent?

Mr. GUNNISON.—We object to that question as irrelevant, incompetent, and immaterial and as calling for a conclusion of the witness—"other acts of ownership."

The COURT.—Yes, that calls for a conclusion of the witness as to what he did. Ask him what he did with reference to this property—that is a plain simple question.

Q. (By Mr. BAYLESS.) What did you do with reference to that property?

A. Nothing more but to look after it the same as any other property claimed by the company, paid taxes on it, and treated it as any other property of the company.

Q. While you were agent did you know of any adverse claim of ownership of this property?

Mr. GUNNISON.—We object to that as irrelevant, incompetent, immaterial, leading and suggestive.

(Testimony of A. S. Dautrick.)

Mr. BAYLESS.—I would like to be heard on that.

The COURT.—Very well.

Mr. BAYLESS.—If the Court please, Mr. James must show exclusive possession, open, adverse, and notorious possession, in order to recover.

The COURT.—Yes, but you are introducing Mr. Dautrick in chief. You don't know what Mr. James is going to show.

Q. (By Mr. BAYLESS.) You say you paid the taxes on it while you were agent? A. Yes.

Mr. GUNNISON.—Just a minute. We move to strike the testimony of Mr. Dautrick with reference—that he paid the taxes on the ground, as incompetent, irrelevant, and immaterial, and not the best evidence.

The COURT.—He has not given any testimony about the payment of taxes yet.

Mr. GUNNISON.—I think he did. [318—278]

The COURT.—Mr. Dautrick?

Mr. GUNNISON.—Yes—among other acts, under general supervision, he paid the taxes.

The COURT.—Motion denied.

Q. (By Mr. BAYLESS.) I understood you to say you paid the taxes on this property while you were agent?

Mr. GUNNISON.—Same objection.

The COURT.—Objection overruled.

A. I paid them for the company, yes, sir.

Q. (By Mr. BAYLESS.) Mr. Dautrick, while you were agent was Mr. James hauling lumber or

(Testimony of A. S. Dautrick.)

supplies and landing them on this particular piece of property?

Mr. GUNNISON.—We object to that question as irrelevant, incompetent, and immaterial, and not within the issues as set up by the plaintiff's complaint.

The COURT.—I cannot tell yet, Judge Gunnison, whether it is material or not. Suppose Mr. James or anybody else was using the beach for any particular thing and he goes and orders him off. Now, that would be an act of ownership. Of course, I cannot tell whether it is going to be material or not, but that question so far as it has gone is preliminary.

Mr. GUNNISON.—Exception. We also object to the question as leading and suggestive.

The COURT.—Objection overruled.

A. I think he was.

Q. (By Mr. BAYLESS.) Do you know how frequently he landed lumber on the beach while you were agent? A. No, I do not.

Q. Did you know that he was landing on the beach there? A. Yes, sir.

Q. Did you do anything toward preventing his landing there? [319—279] A. No, sir.

Mr. GUNNISON.—We object to that as irrelevant, incompetent, and immaterial, and the reasons why he didn't.

The COURT.—Yes, I think so, Mr. Bayless, unless you can make it appear where your idea is relevant, I think a motion to strike it as not being relevant will be sustained.

(Testimony of A. S. Dautrick.)

Q. (By Mr. BAYLESS.) Why was it you didn't order Mr. James off?

Mr. GUNNISON.—We object to that. That is a different question, your Honor. “Why didn't he do it”? Now he has changed it and we object to it as irrelevant, incompetent, and immaterial.

The COURT.—That isn't showing the exercise of acts of ownership. That is showing the reasons why he didn't exercise the act of ownership. That would be properly rebuttal.

Mr. BAYLESS.—Very well, sir, that is all.

Cross-examination.

(By Mr. GUNNISON.)

Q. You were here, I think you said, between September, 1901, and September, 1903, as the agent of the Pacific Coast Company? A. Yes, sir.

Q. And you said that when the property was turned over to you such acts were done as usually take place upon the transfer of an agency?

A. Yes.

Q. What are those acts?

A. The ordinary practice is, an inventory is shown to the incoming agent and it is checked up and where there is real estate and if he thinks it worth while, he is shown the boundaries of it to know where it is; in other words, he receives the physical property from the retiring agent. [320—280]

Q. As per inventory?

A. No, the inventory isn't a necessary part of it; I have received a number of agencies where I didn't receive an inventory.

(Testimony of A. S. Dautrick.)

Q. How did you receive it?

A. I received the personal property as per inventory and the real estate by being shown the boundaries.

Q. Did they take you to the ground?

A. Yes, sir.

Q. What time in September was it?

A. I think it was about the 15th.

Q. Fifteenth of September, 1901?

A. I think so.

Q. Where did you go to be shown the boundaries?

A. No boundaries, didn't show me the boundaries. Mr. Robinson had started for the south before I got here and Mr. Hart, who was the cashier, turned the agency over to me.

Q. Then Mr. Robinson didn't surrender the property to you?

A. Yes, he did it through his cashier.

Q. Was Mr. Hart Mr. Robinson's agent or the agent of the Pacific Coast Company while Mr. Robinson was absent?

A. Mr. Hart was cashier for the Pacific Coast Company and—

Q. Acting agent?

A. Mr. Robinson received permission from the general offices in Seattle to leave here before I got here, with instructions to have Mr. Hart turn the agency over to me.

Q. So that really Mr. Hart was acting agent there in Mr. Robinson's absence? A. Yes.

Q. What did Mr. Hart do with reference to this

(Testimony of A. S. Dautrick.)

piece of property in controversy.

A. Mr. Hart asked Mr. McLaughlin, who was the agent on the dock, [321—281] to go down there and show me the boundaries of the property.

Q. Mr. McLaughlin? A. Yes, sir.

Q. Then Mr. Hart didn't go with you?

A. No, sir.

Q. Do you know whether or not Mr. McLaughlin knew where the boundaries were?

A. I am sure he did.

Q. Why are you sure?

A. He had made several maps of the property.

Q. Where is Mr. McLaughlin now?

A. I do not know.

Q. Did he take a map with you and show you?

A. Yes.

Q. Where did you go?

A. Went down along the beach.

Q. That is rather indefinite, Mr. Dautrick.

A. Well, down to the old Carroll and Murray wharf and on down to what was called the boundary of the Pacific Coast property.

Q. What did he point out to you as the boundary of the property, Mr. Dautrick?

A. Why, a stake up on the bank, I should say up there among some of those cabins, a great big stake had been put in to mark the southern boundary.

Q. On the upland? A. Yes, sir.

Q. Did he point out anything to you on the beach?

A. No, the line was the line that was supposed to run down from that stake to deep water.

(Testimony of A. S. Dautrick.)

Q. Do you remember what he said about deep water? A. No, I do not. [322—282]

Q. Do you remember what he said about how far that boundary extended out over the tide flats?

A. No.

Q. Did the Pacific Coast Company at that time, or the Pacific Coast Steamship Co., have any structure or anything upon these tide flats in question to mark them as a portion of their property?

A. I am not positive, Judge Gunnison, but I believe there was an old pile there—it was pretty well worn down, and it was only to be seen at low tide, but I think there was an old pile there.

Q. And was that pointed out to you by McLaughlin? A. I think it was.

Q. That was on September 15, 1901?

A. Yes, sir.

Q. Is that pile there now? A. I do not know.

Q. Will you describe it as you saw it that day.

A. Well, it was just a short stub of an old decayed pile, black on top just like any old one would be.

Q. How far down on the beach was it?

A. I should think it was pretty nearly low tide; that would be my judgment.

Q. And where was it with reference to the company's line, right on the line with the stake on the upland? A. Yes, supposed to be on the line.

Q. Did you sight it? A. I think so.

Q. You got down and sighted over the line?

A. No; I didn't understand your question—I thought you meant whether I saw it. No, I didn't

(Testimony of A. S. Dautrick.)

take any measurements or sight it.

Q. Do you know whether it was on the line or not?

A. I would say it was, yes, sir. [323—283]

Q. When was the last time you thought of that old pile on the waterfront since the time it was pointed out to you.

Mr. BAYLESS.—Object to that as incompetent, irrelevant, and not proper cross-examination.

Q. (By Mr. GUNNISON.) Prior to this time?

The COURT.—Objection overruled.

A. Well, I really don't think I thought much about it until—I suppose I thought about it last winter when these squatter cases were on and I suppose I thought of it at that time.

Q. (By Mr. GUNNISON.) Now positively, Mr. Dautrick, when did you think of it?

A. I can't be positive of that at this time—it was ten years ago. I know I thought about it when this case came up, when the matter of the transfer of the agency was talked about.

Q. You remember that in 1901, September 15th,—what time of day was it?

A. Why, it must have been along in the afternoon, because I know we were busy in the office in the morning.

Q. Was it a fair day or raining?

A. I cannot remember that.

Q. Was anybody else with you besides McLaughlin? A. No.

Q. What other stakes were pointed out to you at the time? A. That was all.

(Testimony of A. S. Dautrick.)

Q. Just those two stakes,—that lower pile at low water mark, was there a mound around it?

A. I couldn't tell you that, because it wasn't entirely bare.

Q. You were down there at low water?

A. I imagine it was low water or about low water.

Q. But you say you couldn't see it unless it was low water?

A. It was approximately low water I said.

Q. I mean, was it at low tide when this was pointed out to you? [324—284]

A. I am not positive whether it was entirely low tide or not.

Q. But that pile was visible when you saw it on the afternoon of the 15th of September, 1901?

A. There was a top of an old black pile which McLaughlin pointed out to me as on the line.

Q. You don't know how high it was?

A. No, but from the looks, it couldn't be very high.

Q. What was its diameter? A. I do not know.

Q. How close did you get to it?

A. I stood on the bank.

Q. How far was it from where you stood on the pile?

A. I don't know; I don't know how much the tide recedes down there.

Q. Did you ever see it afterward?

A. I think so.

Q. Well did you—not think so?

A. I am not positive.

Q. You don't remember having seen it since?

(Testimony of A. S. Dautrick.)

A. No.

Q. You have been there at low tide, when the tide was away out? A. Lots of times.

Q. And when you turned this property over to Mr. Swan later, did you point that pile out to him?

The COURT.—Well, I don't think that is cross-examination, Judge Gunnison. It opens up so many things that the other side would be entitled to redirect on, unless objection is made. If counsel doesn't object, I am going to interrupt it myself so as to shut those things off.

Q. (By Mr. GUNNISON.) Now, what else was there on this piece of tide land besides this pile?

A. Not anything.

Q. Was there any location notice there? [325—285]

A. No, sir.

Q. Now, when was the first you exercised any act of ownership over that; what was the first act of ownership you exercised over that after having been down there looking at it?

A. Well, I think probably the next thing that I did was to talk with Messerschmidt about landing some wood there.

Q. When did Mr. Messerschmidt land wood there?

A. I am not sure whether it was the first year or the second year I was here; it was either 1901 or 1902.

Q. And did you give him a written or verbal permit? A. Verbal.

Q. He came to you and asked you if he might land it there? A. Yes, sir.

(Testimony of A. S. Dautrick.)

Q. And you said what? A. I said he could.

Q. He hadn't gone on there with the wood and you had asked him what he was doing there?

A. No, sir.

Q. Where was it you saw Mr. Messerschmidt—where did you see Messerschmidt on this occasion?

A. That is, when the conversation took place?

Q. Yes, sir.

A. In the Pacific Coast Company's office.

Q. Was the wood already on the ground or had it not yet been landed there?

A. It hadn't been landed yet.

Q. Now, when was it landed with reference to the time of your conversation with Mr. Messerschmidt?

A. Oh, I don't know. I should say a couple weeks later, because he told me he had some Indians cutting wood for him, so I imagine it didn't come in till later.

[326—286]

Q. Did you see that wood down there?

A. Yes, sir.

Q. Part of it was on the beach and part on the upland?

A. My recollection is that he laid some of the wood—made a cribbing of some of the wood on the upper portion of the beach, then piled wood on that and some on the upland.

Q. Was that below the line of mean high tide?

A. Yes.

Q. So it was out of reach of the water?

A. Well, the water would lap it a little, but not enough to take it out.

(Testimony of A. S. Dautrick.)

Q. You mean at high tide? A. At high tide, yes.

Q. How many loads of wood did he discharge there that summer? A. That I do not know.

Q. Do you know whether there was more than one?

A. I believe there was, but I am not sure, because after he started work there I didn't pay any attention to it.

Q. Was anybody else using that tide land at that time for any purpose, to your knowledge?

A. Why, I think Mr. James was using it occasionally.

Q. Was there any one else using it?

A. Why, temporarily; there were people running boats in there, small fishing-boats or a dory, or something of that sort.

Q. Was Mr. James there under permission from you?

A. He was there under permission from the company.

Q. In what way?

A. He had permission from the man who preceded me as agent.

Q. How do you know?

A. Merely by his statement to me.

Q. Whose statement.

A. Mr. Robinson's. [327—287]

Q. When did you see Mr. Robinson?

A. At Seattle before I came up.

Q. How came you to discuss that with Mr. Robinson?

A. Because when I came here as agent, I was in

(Testimony of A. S. Dautrick.)

Seattle and I went up to the office of the attorney for the Pacific Coast in order to learn what the situation was about this property, which was then in litigation, and otherwise I probably wouldn't have known anything about it.

Q. That is, before you came up here this time?

A. No, before I came here as agent in 1901.

Q. Now, Mr. Robinson was there? A. Yes, sir.

Q. What did he say to you?

A. Well, after we talked generally about agency matters and among other things he said the policy was not to permit any permanent structures or any occupation of that tide land, which they expected to use as a wharf later on.

Q. What else did he say—what did you say then?

A. There wasn't much for me to say; all I wanted was to know what to do.

The COURT.—Well, when Mr. Bayless wanted to go into that matter, I sustained your objection, and now if you cross-examine him on that it isn't cross-examination.

Mr. BAYLESS.—I have no objection.

The COURT.—I don't care whether you have or not.

Mr. BAYLESS.—I want to examine him, if the Court please.

Mr. GUNNISON.—Well, I don't care—it is all hearsay anyway.

Q. If Mr. Messerschmidt in the preliminary hearing of this case, testified that he had about forty-five cords of wood laying there and went down for the

(Testimony of A. S. Dautrick.)

wood and the Pacific Coast Company [328—288] asked him if that was his wood and he told them it was and he was then asked whether he laid any claim to the ground, would he be testifying to the truth or was he mistaken?

A. No, I suppose he was testifying to the truth; I think there might be a mistake on the part of either of us. I am testifying as to my recollection of it, Judge.

Q. You wouldn't say positively that you gave Mr. Messerschmidt the permission before he went on, or whether it was after?

A. I would say positively that my recollection is that he came to the office and spoke about landing the wood there and was given permission. I might be mistaken.

Q. You wouldn't say that was after or before the wood was put on?

A. No, but my judgment is before.

Q. So that Mr. Messerschmidt was mistaken as you recollect it? A. As I recollect it, yes, sir.

Q. What did you do in 1902 with reference to this ground?

A. Not anything except what I did in the year before.

Q. Now, Mr. James was still landing wood—I think you testified that Mr. James was landing lumber on the beach during those two years you were agent? A. I think he was, yes, sir.

Q. And you did nothing to stop him using it during that time? A. No, sir.

(Testimony of A. S. Dautrick.)

Q. How much taxes did you pay on this particular piece of ground? A. I can't tell you that.

Q. Did you pay the taxes—you testified that you paid the taxes on the Pacific Coast Company's property here? A. Yes, sir.

Q. Did you pay a sum on the whole of the Pacific Coast holdings?

A. Yes; you know how the statement comes from the Treasurer. I paid the whole thing in one check.
.[329—289]

Q. And you paid it on the Murray and Carroll wharf site? A. Yes, sir.

Q. And as it was included in the whole—hadn't been segregated by any account—then you paid it on this? A. Yes, sir.

Q. And if it had been, you wouldn't pay it on this?

Mr. BAYLESS.—I object to this as argumentative.

The COURT.—Yes, I think so.

Q. (By Mr. GUNNISON.) Are you able to state whether you paid any taxes on this particular piece of ground in controversy? A. Yes, sir, I am.

Q. Now, how do you figure that out?

A. Because the property was in litigation and I didn't take the chance of anybody else paying it.

Q. This property?

A. This Carroll-Murray wharf tract.

Q. The Carroll and Murray wharf site?

A. At that time—I paid it.

Q. So far as paying on this particular piece, you didn't make any special payment on this particular

(Testimony of A. S. Dautrick.)

piece? It was a general payment? A. Yes.

Q. During any time you were here did the Pacific Coast Company, or the Pacific Coast Steamship Company, or you, as their agent, use this particular piece of ground in controversy for any purpose whatever?

A. No, sir.

Mr. GUNNISON.—That is all. [330—290]

Redirect Examination.

(By Mr. BAYLESS.)

Q. Did any tenant of the Pacific Coast Company, or permittee, use this particular piece of property while you were agent?

Mr. GUNNISON.—That is objected to as leading, suggestive, and part of their examination in chief.

The COURT.—It is not redirect examination.

Mr. GUNNISON.—That is what I mean.

Mr. BAYLESS.—If the Court please, he just asked if we used it ourselves.

The COURT.—He never asked whether any permittee used it. He asked him if the Pacific Coast Company used the ground. He said no.

Q. (By Mr. BAYLESS.) I believe I understood you to say that this piece of property was a portion of the Carroll-Murray wharf site? A. Yes, sir.

Q. You paid taxes on the whole Carroll-Murray wharf site? A. Yes, sir.

Q. Including this piece of property?

A. Yes, sir.

Q. Was Mr. James the only occupant or casual user of this piece of property during the time you were agent?

(Testimony of A. S. Dautrick.)

Mr. GUNNISON.—We object to that as irrelevant, incompetent, and immaterial, and not proper redirect examination.

The COURT.—Objection sustained on the ground that it is not redirect examination.

Mr. GUNNISON.—There is one question on cross-examination that I would like to ask—I omitted it—if I may have that permission.

The COURT.—Proceed. [331—291]

(By Mr. GUNNISON.)

Q. Mr. Dautrick, during the time you were the agent for the Pacific Coast Company, did the Pacific Coast Company use the Murray and Carroll wharf for the purpose of landing any of its vessels, or was it used as a public wharf at that time?

A. It was used as a public wharf, I should say, in the sense of a public wharf occasionally by small steamers, but not by the Pacific Coast Company itself.

Q. Did you have a wharfinger in charge of it?

A. No, if there was any—to make that clear to you, the people coming in with small boats would occasionally tie up there at the wharf and if they took anything across there we didn't pay any attention to it and wouldn't charge any wharfage, but no regular freight—just packages.

Q. You charged no wharfage?

A. Not for people taking small packages.

Mr. GUNNISON.—That is all.

(Continuation of redirect examination by Mr. BAYLESS.)

Q. Who was using the old Carroll wharf building

(Testimony of A. S. Dautrick.)

and approach there when you came here?

A. My recollection is that there was a man using the shore end of it and was rented out for residence purposes.

Q. Had the Pacific Coast Company abandoned that property?

Mr. GUNNISON.—We object to that as calling for a conclusion and not proper redirect examination.

The COURT.—Objection sustained.

Q. (By Mr. BAYLESS.) Were these occupants tenants of the company? A. Yes, sir.

Q. And these buildings were occupied, were they, during the whole period of your agency? [332—292]

Mr. GUNNISON.—We object to that question as not proper redirect examination and leading.

The COURT.—Objection overruled—you went into the matter yourself.

A. Yes, sir.

Mr. GUNNISON.—Only as a wharf, your Honor.

The COURT.—Objection overruled.

(Witness excused.)

(Whereupon Court adjourned until 2 P. M. the same day, when Court reconvened pursuant to adjournment.) [333—293]

Mr. BAYLESS.—If the Court please, this morning I announced that I would have only two witnesses, Mr. Dautrick, and Mr. Ewing, in our case in chief. Since that time I have discovered some evidence which is very pertinent to the case in chief and which I didn't know existed at that time, and I desire the

(Testimony of A. S. Dautrick.)

privilege of submitting that as well. It goes to the early occupation of this property by the Pacific Coast Company and is of a similar character as that submitted by Mr. Wells. I would like very much to call Mr. Lloyd Winter and introduce a photograph. It will be very short and Mr. Winter is printing photographs at present and will be ready about three o'clock.

Mr. GUNNISON.—Well, we renew our objection to that, your Honor. Of course, it is in your Honor's discretion.

Mr. BAYLESS.—It is evidence that was discovered since this suit began.

The COURT.—How would you have gotten along, Mr. Bayless, if the defendant had gone on with his case—you wouldn't have his testimony at all. You cannot announce yourself ready to try a case and then urge as a ground for reopening it that you had recently discovered some more evidence. That certainly wasn't under a misapprehension of whether to put certain testimony in in chief or in rebuttal.

Mr. BAYLESS.—Your Honor is entirely right as to that, but it is evidence that I didn't know existed which is particularly relevant and I think it would be proper. It would be the kind of evidence that would warrant your Honor giving us a new trial in this case.

The COURT.—It is very irregular—I will permit you to do it.

Mr. GUNNISON.—We except. [334—294]

[Testimony of S. H. Ewing, for Plaintiffs (Recalled).]

S. H. EWING, a witness sworn in behalf of the plaintiff, being recalled to the stand, the plaintiff having been permitted to reopen its case in chief by the Court, testified as follows:

Direct Examination.

(By Mr. BAYLESS.)

Q. You have been sworn, Mr. Ewing?

A. I have.

Q. During your time as agent of the company, what, if anything, have you done with reference to this particular piece of property in controversy as agent of the company?

Mr. GUNNISON.—I don't remember Mr. Ewing testifying as to how long he has acted as agent.

The COURT.—You had better ask him to make sure.

Q. (By Mr. BAYLESS.) When did you become agent of the Pacific Coast Company?

A. In January, 1911.

Q. You are agent of the company at the present time? A. I am.

Q. Since January, 1911, what have your duties been as agent with reference to the property involved in this case?

Mr. GUNNISON.—Object to that as a repetition of the evidence already given by Mr. Ewing as to what his duties are.

The COURT.—Well, he may state in a general

(Testimony of S. H. Ewing.)

way, because it is preliminary to a question that I suppose will follow.

Mr. GUNNISON.—And further it should be confined to the time between the appointment as agent and the time of the commencement of this suit.

The COURT.—Confine it to that time. [335—295]

Q. (By Mr. BAYLESS.) From January, 1911, down to last August, when this suit was commenced, what were your duties with reference to this property.

Mr. GUNNISON.—We object further as to what his duties were—what he did might be competent.

The COURT.—That is right.

Q. (By Mr. BAYLESS.) What did you do with reference to this property?

A. Looked after the company's interests in regard to it and paid the taxes on it.

Mr. GUNNISON.—We move to strike that as not responsive to the question.

The COURT.—Motion denied.

Q. (By Mr. BAYLESS.) Did you do anything else with reference to this property as the company's agent? A. No, sir.

Q. Just paid the taxes on it?

A. Paid taxes and saw that no squatters got on there—any people that hadn't any right, without the company's permission.

Q. Was anyone occupying the property when you became agent?

A. Mr. James had a gridiron on there and used to put scows on there and take off lumber. Mr.

(Testimony of S. H. Ewing.)

Webster had a pile-driver there one winter.

Q. Did you have any arrangement with Mr. Webster or Mr. James with reference to their occupancy of this property?

A. Mr. Swan informed me when I took over—

Mr. GUNNISON.—We object to anything Mr. Swan informed Mr. Ewing as hearsay.

The COURT.—That is correct. The witness will not testify as to what anyone told him.

A. There was one occasion there when Mr. Webster was putting his pile-driver on the ground and drove a couple of piles and I went after him and asked what he was doing. He said that he was [336—296] driving a couple piles, that he didn't lay any claim to the property.

Q. (By Mr. BAYLESS.) Did you have any arrangement with Mr. James with reference to his use of the gridiron?

A. Not personally, no, sir; it was before my time.

Mr. GUNNISON.—We move to strike the testimony of the witness that "it was before his time."

The COURT.—The motion will be granted.

Q. (By Mr. BAYLESS.) Did you do anything else as agent of the company with reference to this property? A. No, sir.

Mr. BAYLESS.—That is all.

Cross-examination.

(By Mr. GUNNISON.)

Q. You say that you looked after the company's interests and paid the taxes, Mr. Ewing?

A. Yes, sir.

(Testimony of S. H. Ewing.)

Q. That Mr. James had a gridiron when you took possession?

A. There was a gridiron on there; yes, sir.

Q. You said Mr. James' didn't you?

A. If I did, I did it unintentionally. I said there was a gridiron there.

Q. Do you know whose it was? A. I did not.

Q. Do you know who used it?

A. I knew Mr. James used it.

Q. It is a fact that Mr. Webster has never claimed title to this? A. So I understand, yes, sir.

Q. And you had no arrangement with Mr. James?

A. No. [337—297]

Q. And in paying taxes, did you pay it on this particular piece of property or paid for the Carroll-Murray wharf site?

A. Carroll-Murray wharf site, which was divided into three different payments.

Q. Please describe those.

A. There was one valuation placed on the first two hundred feet—

Q. (By the COURT.) Uplands or tide lands?

A. Tide lands.

Q. (By Mr. GUNNISON.) Beginning where?

A. Beginning at the north end.

Q. You mean the east end?

A. Town end. The first 25 feet was assessed at one valuation and the next 200 at another, and the last, next 150 at another valuation, at so much per foot, which was the lower end of the tract. That was before it was replatted.

(Testimony of S. H. Ewing.)

Q. Then afterwards you paid it on each plat—on each lot? A. On each lot in the block.

Q. When was it platted?

A. Last summer or last spring, about a year ago.

Q. Who paid those taxes?

A. They haven't been paid yet.

Q. So you really haven't paid them on the lots and blocks?

A. Not for this year, but I did for last year.

Q. But you paid taxes last year, but not on lots and blocks?

A. On lots and blocks last year, yes.

Q. What time did you pay that tax?

A. It was around about in July sometime.

Mr. GUNNISON.—That is all.

(Witness excused.) [338—298]

Mr. BAYLESS.—I will be unable to offer Mr. Winter's testimony at this time, if the Court please. He advised me that he could not be ready before three o'clock.

The COURT.—Very well, proceed with the cross-examination of Mr. Webster.

Mr. GUNNISON.—This may require the calling of all our witnesses, if the Court please.

The COURT.—It may, Judge Gunnison, and you will be given an opportunity to do so.

[Testimony of Edward Webster, for Defendant
(Recalled—Cross-examination).]

EDWARD WEBSTER, a witness called and sworn in behalf of the defendant, having previously testified on direct examination, was further examined and testified as follows:

Cross-examination.

(By Mr. BAYLESS.)

Q. I believe in your direct examination your attention—you were merely asked to testify as to the facts and circumstances between 1900 and the date of the commencement of this suit; is that a fact?

A. Yes.

Q. In 1900 what was the condition of the old Carroll-Murray wharf?

A. The condition of the wharf proper?

Q. Yes.

A. The wharf was in bad condition in 1900.

Q. Was it being occupied by any person or corporation? A. No, not that I know of.

Q. No one was occupying any buildings there?

A. That I don't know; I know at that time there were people in there, but the exact time I don't know.

[339—299]

Q. Do you know whether or not it has been occupied from 1900 down to the date of the commencement of this case?

A. Yes, I know there has been—I know it was occupied there by someone who was living in it. I don't know, but I think Johnson was living there once and then had a sardine factory there and glove

(Testimony of Edward Webster.)

factory, but the exact dates I don't remember.

Q. When did Mr. James start to land lumber at this beach? A. That I don't exactly know.

Q. Do you remember when he first started?

A. I know that in 1904 I drove for him some piles there; he was landing then.

Q. Did you ever see him prior to that time?

A. Oh, yes, many a time he brought in scows and put them on the gridiron myself for him.

Q. Prior to 1904? A. Oh, no, after 1904.

Q. Prior to 1904 you haven't any knowledge of Mr. James' occupation there?

A. No; of course, I know he was landing lumber on the beach, but the dates I don't know.

Q. Did you ever see him before that time?

A. No.

Q. In 1904 you say you drove some piles?

A. Yes; drove two piles for him to tie up to.

Q. How far apart were those piles?

A. I think about ten feet.

Q. Were they perpendicular to the beach or parallel? A. No, they were up and down the beach.

Q. Extending out towards deep water?

A. Yes.

Q. One of the piles close to shore and the other one out towards deep water? A. Yes. [340—300]

Q. Whereabouts on that particular beach did you drive those piles?

A. Right in the line of the Young Company. I didn't know it at the time, but it proved that they were where the C. W. Young Company claimed.

(Testimony of Edward Webster.)

Q. Did Mr. James have any structure on the beach at that time?

A. No, I don't think so; I don't remember of any at that time.

Q. When was the C. W. Young wharf built?

A. That was built in 1910.

Q. Well, there were lots of piles driven before that time?

A. Yes, in 1908 I drove a row of piles for him there.

Q. Were there any piles on the line of the Young wharf when you drove these two piles for Mr. James?

A. No, sir; there was a pile up shore there that I drove for Carroll in 1887—that pile was still there.

Q. Is it standing there at the present time?

A. Well, I haven't noticed; it was there a few years ago.

Q. That also is in the line of the Young piles?

A. Yes, right in the line of it.

Q. When was the first structure put on there by Mr. James? A. That I couldn't tell you.

Q. Do you know anything about a platform put on there by Mr. Davidson? A. Yes.

Q. Where, with reference to the present gridiron, was that old platform located?

A. Well, I would say that it was further to the west and a little lower on the beach than the present gridiron that is there.

Q. It was closer to the water?

A. Closer to town.

Q. Was it immediately back towards the uplands

(Testimony of Edward Webster.)

from the present gridiron?

A. No, it was down pretty—had to get it down pretty well to get [341—301] the boat up there.

Q. How close in feet?

A. Oh, well, now, I never measured it—I couldn't say, I never measured it. I would say it was 50 feet down.

Q. Fifty feet away? A. Yes, further down.

Q. (By the COURT.) You mean the gridiron was 50 feet further down from the platform, or the platform further down from the gridiron?

A. No, the present gridiron was further down and fifty feet along there.

Q. Further down from what?

A. From where the present one is.

Q. You mean the first gridiron was fifty feet down the beach?

A. Yes, that is the way it looks in my mind now.

Q. (By Mr. GUNNISON.) Do you mean the gridiron or the platform?

A. The platform; from the present gridiron it was further toward the west from where the gridiron now stands.

Q. (By Mr. BAYLESS.) I call your attention to Defendant's Exhibit "A" and ask you if you can point out on this map the place where the old platform stood with reference to the gridiron which is shown there and just mark the place.

A. You see, it is pretty hard to say, because the street wasn't through there or anything. If I was going to say, I would say that the gridiron was along

(Testimony of Edward Webster.)

in there somewhere and around this way and was down a little further on the beach here, but this is only guesswork. Of course, I was in there once and drove some piles along where that was and that winter the whole structure went out so it was just—it is only guesswork. (Indicating.)

The COURT.—Well, mark it with a Z, the place where you think the platform was. [342—302]

Mr. GUNNISON.—Draw a line to cover the section.

A. Now, I would say it was right along in here. (Witness marking Defendant's Exhibit "A.")

Mr. BAYLESS.—Mark a Z in the middle of it. (Witness marks exhibit.)

Q. The street wasn't built down there when this old platform was put in?

A. No, sir, the streets weren't planked down there.

Q. Did you drive any piles for Mr. Scott?

A. Yes.

Q. Where, with reference to this platform—where on that plat did you drive those piles; that is to say, can you indicate on this plat where you drove the piles?

A. Well, along the face of where he had his platform.

Q. Mark it on there.

A. Well, it is along the face of that there. (Indicating.)

Q. The seaward face of this strip you have marked "Z"? A. The water side.

Q. Just two piles?

(Testimony of Edward Webster.)

A. Well, I don't remember; I was in there and charged him for a half day's work, and I don't remember just exactly how many I did.

Q. Who paid you for that work? A. Mr. Scott.

Q. Scott himself. A. Yes, Scott himself.

Q. Was Mr. James occupying any portion of that beach or using any portion of the beach?

A. Yes, Mr. James was using it.

Q. At that time? A. Yes, sir.

Q. Did Mr. James ever use this platform? [343—303]

A. That Scott built—no, I don't think so. It went out that winter and I don't think he used it, because he had a little gridiron or timbers that he was using himself.

Q. On this side of the platform?

A. Yes, on this side of the platform.

Q. How big was that little gridiron?

A. Of Mr. James'?

Q. Yes.

A. Well, it was some fourteen feet, sills laid down the beach. The top one was buried clear down into the beach.

Q. How big was the structure—what would be the dimensions?

A. I don't remember—probably thirty or forty feet long.

Q. And fourteen feet wide? A. Yes, sir.

Q. Did you ever see any lumber from—

The COURT.—Wait, Mr. Bayless, just a moment. I wish you would take that map, Mr. Webster, and

(Testimony of Edward Webster.)

mark on the map where you think this first gridiron that you say was Mr. James' was located. Mark that with an "M."

A. That laid right along in here. (Witness indicating.)

The COURT.—You have already marked it "G."

A. That is where that pile is (indicating). That gridiron lay right in here—here is where I drove the piles on this line and he had a little gridiron right in here—"M."

Q. (By Mr. BAYLESS.) Does this sketch represent this gridiron?

A. Yes. Now, this is where he had those timbers—drove piles in here and had timbers right in here so as to lay it on. Right in here is a flat rock and they used to drive in this way. This gridiron wasn't here then. (Witness indicating.)

Q. Do you know when this smaller gridiron was built, Mr. Webster? A. No, I do not.

Q. At that time, in 1904, Mr. Webster, how frequently did Mr. James [344—304] have occasion to land scows and rafts at this beach?

A. That I couldn't say; I wasn't around all the time.

Q. How frequently did you observe him do that?

A. That I couldn't say. Of course, I wasn't in town all the time. I was running a pile-driver and was away.

Q. Did you see anybody else landing there besides Mr. James on that beach?

A. Yes, I have seen—when do you mean?

(Testimony of Edward Webster.)

Q. At any time from 1904 down to 1913?

A. In 1905 I saw the time they landed the "Garnet" with that load—

Q. Of what?

A. Of timbers for the Perseverance.

Q. The "Garnet" was a boat belonging to the Wrangell sawmill? A. Yes, sir.

Q. When was that?

A. I think that was in 1905, along in the summer-time.

Q. Where, with reference to the present gridiron, did the "Garnet" land?

A. As near as I could tell you where I marked it there.

Q. Landed right on the platform?

A. No, the platform was merely piles set up and capped over like this was a platform (indicating) and landed over there and rolled timbers off on the platform.

Q. Landed the scow on the beach and then unloaded it? A. Yes.

Q. Did they land it on that gridiron that Mr. James had? A. No, that was way off.

Q. How far apart were these two structures at that time? A. I couldn't tell you just exactly.

Q. About a hundred feet?

A. May have been, more or less, I never measured it. [345—305]

Q. Do you know who occupied this little platform?

A. Which little platform?

Q. The platform erected by Mr. Scott?

(Testimony of Edward Webster.)

A. Well, I saw them unloading timber on there for the *Perseverance*.

Q. And that timber came from where?

A. Wrangell.

Q. Did you ever see any of Mr. James' lumber or timber on there? A. No.

Q. Did you say Mr. James was landing lumber there at the same time this platform was being used?

A. I didn't say any such thing, because I didn't see it.

Q. When was the street put down there?

A. In 1906; started in September and finished in November.

Q. Do you know when the present gridiron was built? A. Yes, sir.

Q. When was it built? A. In 1906.

Q. What time in the year?

A. Along, I think it was summer, in June, working on it.

Q. June, 1906? A. Yes, sir.

Q. Do you know whether or not any mill timbers from Wrangell were landed there at that time?

A. No, sir.

Q. Do you know whether or not Mr. James was doing any business with the *Perseverance* at that time? A. No, I don't.

Q. Do you know whether or not he was furnishing lumber or material to the *Perseverance Company*?

A. I do not.

Q. Are you interested with Mr. James in the saw-mill? [346—306]

(Testimony of Edward Webster.)

A. No, sir.

Q. You are a partner of his in the pile-driver?

A. Yes, sir.

Q. You laid your pile-driver up there on the beach one winter? A. Yes, I did.

Q. Do you know how long the construction period continued at the Perseverance Mine? A. I do not.

Q. Do you know when they started to build the mill?

A. Well, I know about what time they started to build the mill, but the dates I don't know. I have got no records of it.

Q. How long did it take them to build the mill?

A. I don't know.

Mr. GUNNISON.—We object to that as irrelevant, incompetent, and immaterial, and not proper cross-examination.

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception.

Q. (By Mr. BAYLESS.) Do you know who employed Mr. Scott to build this platform?

A. I do not; I never asked him.

Q. Do you know Charles E. Davidson?

A. I know him, yes, sir.

Q. Do you know anything with reference to his occupying that ground as receiver for the Willson and Sylvester Estate? A. I know he was, yes, sir.

Q. Do you know whether or not as such receiver he ever occupied this platform and the ground surrounding it?

A. I don't know that he occupied it.

(Testimony of Edward Webster.)

Q. Don't know anything about it? A. No.

Q. All you know is that lumber was brought from Wrangell and landed there? [347—307]

A. Yes, sir.

Q. For the Perseverance Company? A. Yes.

Q. Do you know whether or not, Mr. Webster, the agents for the Pacific Coast Company had supervision over this property in 1900?

Mr. GUNNISON.—We object to that question as irrelevant, incompetent, and immaterial, as calling for a conclusion whether or not they had supervision, and not proper cross-examination.

The COURT.—Objection sustained on the last ground.

Q. (By Mr. BAYLESS.) Do you know whether or not, Mr. Webster, the Pacific Coast Company did anything with reference to looking out for that ground there?

Mr. GUNNISON.—Same objection.

The COURT.—Same ruling.

Q. (By Mr. BAYLESS.) Mr. Webster, just about how much of this 113 feet in dispute in this case did Mr. James actually occupy in 1904?

A. I do not know.

Q. Did he always land in one place?

A. Yes, because it was pretty rocky on the beach there and he had quite a place cleared up there.

Q. You do not know who cleared it up there?

A. No, I didn't say that.

Q. Did you ever see any stakes to indicate the boundary of the ground claimed by Mr. James?

A. No.

(Testimony of Edward Webster.)

Q. Do you know whether or not he had this beach staked out? A. I do not.

Q. You do not know how much ground he actually occupied in 1904? A. No, I do not.

Q. Do you know how frequently he came over here and landed vessels? A. I do not.

Mr. BAYLESS.—I think that is all. [348—308]

Redirect Examination.

(By Mr. GUNNISON.)

Q. Which end of the timbers in that small—in the old gridiron were embedded in the beach, the upland side of it—the upland end of it?

A. The upland end of it.

Q. Which was the forty-foot distance and which was the fourteen-foot distance?

A. The fourteen was the width of it.

Q. You mean this fourteen feet along the—

A. Parallel with the beach.

Q. And forty feet running out from the beach out-shore? A. Yes.

Q. How much ground would be occupied in landing a scow on this gridiron?

A. Well, that would be according to the bigness of the scow—size of the scow.

Q. I don't mean when resting on there, but how much room did it take to land it on there under ordinary conditions?

A. Well, ordinary landing of a scow—of course, to maneuver a scow good you would want at least sixty feet anyway.

Q. So that the least ground, even with that old

(Testimony of Edward Webster.)

gridiron, was sixty feet?

Mr. BAYLESS.—Object to that as leading, argumentative, and not proper redirect examination.

The COURT.—Well, the witness has just stated it and he has asked it over again.

Mr. GUNNISON.—It may be a repetition, your Honor.

The COURT.—I know it is a repetition—objection overruled.

A. Yes. [349—309]

Q. Now, you say you saw the “Garnet” land Perseverance timbers in the summer of 1905?

A. Yes, sir.

Q. How many times did you see the “Garnet” land there?

A. To my recollection, I don’t think she came but once for the timbers.

Q. That is the best of your recollection, that she was there once? A. Yes, sir.

Q. In 1904 you say you drove these two piles?

A. Yes.

Q. Now, what else was there in the line of those piles? A. What do you mean?

Q. In the way of piles or posts.

A. There was nothing but a pile that I had driven in 1887.

Q. Where was that? A. That was on this line.

Q. Where, with reference to the beach?

A. Yes, up the beach. We got up just as high as we could get up, but it was below where the street is now.

(Testimony of Edward Webster.)

Q. Was there one or two piles? A. Two piles.

Q. Two piles driven like a dolphin? A. Yes.

The COURT.—Q. Was it on upland or tide lands?

A. No, it was tide lands, because we drove them with a pile-driver.

Q. I mean the two piles you say were there when you went there?

Mr. GUNNISON.—The 1887 piles.

A. There were none there—I drove those.

Q. (By Mr. GUNNISON.) Did you drive them on the upland or— A. It was tide land.

Q. How near the line of medium tide was it? [350—310]

A. It would be about the minimum—the 18-foot tide.

Q. That was as high as you could float the pile-driver on ordinary high tide?

A. Yes, about an 18-foot tide.

Q. So that it was close to the line of high tide, mean high tide?

A. No, the mean high tide would go a good deal higher, because mean high tide would be twenty-eight feet.

Q. That would be the mean high tide?

A. Well, it runs 18, 26 and 28.

Q. Eighteen is the minimum high? A. Yes.

Q. But you went as high as you could go on a minimum high tide?

A. That was the best of my recollection; I knew it wasn't an extreme high tide.

Q. Counsel has asked you if Mr. James had any

(Testimony of Edward Webster.)

marks on the ground; was it marked by anyone else that you know of? A. In what year?

The COURT.—Just a moment. That is not re-direct examination of anything I know of. It would open up another cross-examination.

Mr. GUNNISON.—Your Honor, I don't think I asked Mr. Webster anything about Mr. James marking the ground. Mr. Bayless did ask him if he had the ground marked.

The COURT.—That is all right. You asked him whether anybody else had any markings there.

Q. (By Mr. GUNNISON.) How far were the two piles—the 1887 piles—from a point where you could reach them on the upland without going into the water; is that clear to you? How far away were the two 1887 piles, as distinguished from the two 1904 piles, from a point to which you could get on the upland without getting into the water at ordinary high tide?

A. I would say about forty or forty-five feet. [351—311]

Q. Where you could get at it? A. Yes.

Q. How far were they from where the ordinary high tide reached?

Mr. BAYLESS.—We object to that for the reason that you have not qualified him as an expert tide witness.

The COURT.—Objection overruled.

Q. (By Mr. GUNNISON.) Are those two piles on the beach now?

A. I haven't seen them for some time—I could tell,

(Testimony of Edward Webster.)

but I haven't noticed them for some time.

Q. Has the contour of the beach changed since those were driven, so that the tide doesn't come in as far as it did?

A. No, I don't think so.

Mr. BAYLESS.—We object to this as purely argumentative and leading.

A. No, I don't think it has; I don't think there is any change. There may have been a little stuff in there that would block it on a lower tide, but not on a higher tide.

Q. Mr. Webster, how much of those piles, those 1887 piles, were exposed at low water?

A. You mean out of the ground?

Q. Yes.

A. They were all out.

The COURT.—Out of the ground?

Mr. GUNNISON.—Q. I mean how much could you see at low water?

A. The piles were about five or six feet outside.

Q. And at half a tide they would all be exposed?

A. Yes.

Mr. GUNNISON.—That is all.

(Witness excused.) [352—312]

[Testimony of Lloyd Winter, for Plaintiff.]

LLOYD WINTER, a witness called and sworn in behalf of the plaintiff, it having been permitted to reopen its case in chief by the Court, testified as follows:

Direct Examination.

(By Mr. BAYLESS.)

Q. State your name and occupation.

A. Lloyd V. Winter, photographer, Juneau, Alaska.

Q. When did you first come to Juneau?

A. In the spring of '93.

Q. What has been your occupation since that time?

A. Photographer.

Q. Are you acquainted with the old Carroll wharf in Juneau? A. Yes.

Q. Are you acquainted with the property surrounding that wharf?

A. Yes, I have been there a good deal.

Q. Where were you residing in Juneau when you first came here?

A. On Front Street, just opposite Gross' Theatre.

Q. Did you have any business down around the Carroll wharf?

A. I used to sell photographs and souvenirs down there.

Q. Did you have a stand there? A. Yes.

Q. Did you ever see any boats dock at the Carroll dock? A. Yes, I met them there.

Q. Are you acquainted with the way those boats used to tie up at the dock?

(Testimony of Lloyd Winter.)

A. I have seen a good many come in.

Q. Just explain to the Court how these vessels tied up to the dock.

A. I think the "Queen" was about the only boat I ever saw tied up at that old wharf, but she was so much longer than the breast of the wharf that they had lines from the bow and stern to the beach. [353—313]

Q. Do you know whereabouts on the beach these lines were tied?

A. I don't know just the distance or the point.

Q. You have seen that done, have you?

A. Oh, yes.

Q. I hand you a photograph and ask you to identify it and tell me who took it.

A. That was made by my former partner.

Q. About what year?

A. Mr. Lamdiken, in 1890 or '91.

Q. Before you came here? A. Yes.

Q. Did you ever see a boat tied up to the wharf?

A. That was the usual position that the "Queen" was tied up at that wharf.

Mr. BAYLESS.—We offer this photograph in evidence.

Q. Mr. Winter, how long was the old Carroll wharf used as a wharf; do you know?

A. I could not tell the exact date.

Q. Do you know whether or not that practice was followed—mooring vessels up to the dock by means of head and stern lines—as long as the wharf was used as a wharf?

(Testimony of Lloyd Winter.)

Mr. GUNNISON.—We object to that question as leading and further that there is no evidence here of a practice.

The COURT.—Yes, I think you must omit the word “practice.”

A. I don't recall at this time of seeing any other boat; there were so few boats coming here at that time.

Q. (By Mr. BAYLESS.) How frequently did you see the “Queen” tied up there at the dock in that way?

A. She came about every fifteen days during the excursion or the summer season.

Mr. BAYLESS.—That is all. [354—314]

The COURT.—Is there any objection to the introduction of the photograph?

Mr. GUNNISON.—Just a moment. We object to it in the first place as not having been taken by Mr. Winter and not properly identified; in the next place, that it doesn't show the way the boat is moored at all.

The COURT.—I don't know what it shows, but it is offered as illustrative of the testimony of the witness by showing what he means by running lines ashore. If it doesn't show it, it is the plaintiff's own loss. Objection overruled.

Mr. GUNNISON.—Exception.

(Admitted in evidence and marked “Plaintiff's Ex. #23.”)

(Testimony of Lloyd Winter.)

Cross-examination.

(By Mr. GUNNISON.)

Q. Who did you say this photograph was taken by?

A. Mr. George Lamdiken, a former partner.

Q. Is there anything on this to indicate that—anything on the print to indicate that?

A. No, except just the title of the photograph.

Q. How do you know it was made by him?

A. I bought a half interest with Mr. Lamdiken, and in going over the stock he informed me at that time that that was his negative and was made by him the year prior to my coming.

Q. Then you weren't here when it was made?

A. I wasn't here.

Q. And all you know about it is what Lamdiken told you? A. Yes; it was a portion of his stock.

Q. What vessel is this a photograph of?

A. Steamship "Queen." [355—315]

Mr. GUNNISON.—We move to strike this on the ground that the witness testifies now that his own knowledge as to when it was taken and whom it was taken by is hearsay.

The COURT.—The photograph was not admitted as a correct representation of anything except that the witness says that lines were run ashore in a certain way,—“this is the way I have seen lines run ashore.” Suppose the witness had drawn it out on paper and said, “They ran lines ashore this way.” Instead of that, he produces a picture with a drawing of it.

Mr. GUNNISON.—Very well; we save our exception.

(Testimony of Lloyd Winter.)

Q. How many times did you see the "Queen" moor at that dock, Mr. Winter?

A. I believe the "Queen" averaged a trip to Juneau about every two weeks beginning with that first year of 1903 all that summer and the following summer, I believe.

The COURT.—Q. 1893 or 1903?

A. 1893; and I believe she continued landing at that wharf in 1894. I used to carry a table and show cases down on the wharf and sell my souvenirs and photographs there.

Q. (By Mr. GUNNISON.) Do you know what the length of the "Queen" was?

A. I haven't any idea.

Q. How did they take these lines ashore?

A. I don't know just what their system was.

Q. Did she always land like that?

A. Generally in that position. Once in a while she would make a long turn and come the other way.

Q. Usually made a starboard landing?

A. Similar to that.

Q. Will you mark on that photograph where the other end of that stern line was moored—the land end of that stern line?

A. I couldn't tell you. [356—316]

Q. As a matter of fact, it is moored to this building or this framework? A. I couldn't answer that.

Q. You recognize that old skeleton or framework or building there? A. Yes, sir.

Q. How long was that there?

(Testimony of Lloyd Winter.)

A. That was there for a couple years.

Q. During these two years that the "Queen" was landing?

A. That building was standing as it is now when I came here, without a roof. I remember that.

Q. Well, now, was the "Queen" moored to that building every time? A. I couldn't answer that.

Q. Do you know where the land end of the "Queen" was moored each time? A. No, sir.

Q. Where were the spring lines carried—the stern springs?

A. To the wharf and also to the shore, post of some sort.

Q. Now, when the "Queen" made a port landing, where was her stern line carried?

A. I couldn't tell you.

Q. Did you ever see the "Queen" make a port landing there?

A. I couldn't tell you whether it was a port or starboard; I didn't go down to see how they tied up.

Q. Did they always tie that way even in calm weather with a stern line ashore?

A. I couldn't answer to that.

Q. You mean that every time the "Queen" came in port, she tied with—made a starboard landing and tied with the stern line ashore, do you?

A. That was a common feature with the "Queen" tying up to this shore, and I recall that because they always had difficulty in tying to that shore there. [357—317]

Q. Why difficulty?

(Testimony of Lloyd Winter.)

A. On account of the breadth of the dock. Because the boat was so much longer than the dock.

Q. How long was the "Queen"?

A. I should judge the "Queen" was 300 feet long.

Q. If she made a port landing—you say she sometimes made a port landing?

A. I don't want to testify as to that.

Q. You don't mean to say that she always made a starboard landing? A. I am not testifying to that.

Q. You mean that when the stern of the "Queen" projected a long distance over the face of the wharf that they tied with a stern line to the shore?

A. I have frequently seen them do that.

Q. That is as strong as you put that?

A. Often.

Q. But you don't mean to say they did it every time?

A. Every time I was down there and I was down there every time during the two or three years.

Q. But you don't mean to say she landed that way and tied up that way every time?

A. Well, they had difficulty in getting the bow and stern lines fast to the beach. She was the only large vessel coming up here in those days.

Q. Was she the only vessel that landed there at that dock in those days?

A. No—the "City of Topeka" and the "Alki."

Q. How did they tie up?

A. I couldn't tell you.

Q. The reason this is pretty clear in your mind is because this refreshes it? [358—318]

(Testimony of Lloyd Winter.)

A. No, I was on that dock at that time. I had business on that wharf and I remember how often we had to wait to see the "Queen" tied up. The "Topeka" and the "Alki" were rather short.

Q. They tied up quickly? A. Yes.

Mr. GUNNISON.—That is all.

Redirect Examination.

(By Mr. BAYLESS.)

Q. Did you have any occasion to go down to see the "Topeka" and the "Anchon" or the "Alki" tie up?

A. No, not the "Anchon"—the "Anchon" was wrecked.

Q. I am talking about the "Alki"? A. Yes.

Q. Did you ever see that ship tie up there?

A. Yes.

Q. Do you know whether or not she ran her lines ashore?

Mr. GUNNISON.—We object to that as not proper redirect examination.

The COURT.—Well, you have asked him about other vessels being tied up the same way in your cross-examination. Objection overruled.

A. I don't recall that.

Q. (By Mr. BAYLESS.) Did you have as much occasion to observe the "City of Topeka" and the "Alki" as you did the "Queen"? A. No.

Mr. GUNNISON.—We object to that question as leading, argumentative, suggestive, incompetent, irrelevant, and immaterial, and not proper redirect examination.

(Testimony of Lloyd Winter.)

The COURT.—All the objections are overruled.
[359—319]

Q. (By Mr. BAYLESS.) Do you know what these head and stern lines were attached to on the beach?

A. I don't believe I paid much attention to that; I don't recall how they were fastened.

Mr. BAYLESS.—That is all.

Recross-examination.

(By Mr. GUNNISON.)

Q. Do you know where on the beach they were tied up? A. I do not.

Q. Whether close in to the wharf or far out from the wharf? A. They were away from the wharf.

Q. How far away?

A. I couldn't tell you the distance.

Mr. GUNNISON.—That is all.

(Witness excused.) [360—320]

Mr. BAYLESS.—If the Court please, I would like to ask Mr. Ewing how long the "Queen" was?

The COURT.—Very well.

[**Testimony of S. H. Ewing, for Plaintiff (Recalled).**]

S. H. EWING, a witness sworn in behalf of the plaintiff, being recalled to the stand, the plaintiff having been permitted by the Court to reopen its case in chief, testified as follows:

Direct Examination.

(By Mr. BAYLESS.)

Q. Mr. Ewing, do you know the length of the "Queen"? A. 331 feet.

(Witness excused.)

The COURT.—Is that all the testimony in chief?

Mr. BAYLESS.—Yes, sir.

Mr. GUNNISON.—We desire to reopen our motion.

The COURT.—Very well; the motion is denied. Proceed, Judge Gunnison, with your case. [361—321]

[Testimony of Frank Bach, for Defendant.]

FRANK BACH, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. ROBERTSON.)

Q. What is your name? A. Frank Bach.

Q. Where do you live? A. Douglas Island.

Q. Do you know George E. James? A. Yes, sir.

Q. How long have you been acquainted with Mr. James?

A. Since about '90; somewhere in that neighborhood.

Q. Are you acquainted with the beach line here in the vicinity of Juneau? A. I am.

Q. Do you know that particular piece of beach on which Mr. James' present gridiron is situated?

A. I do.

Q. When did you first become acquainted with that piece of beach so far as your present recollection serves you? A. '83—1883.

Q. Did you know that piece of beach land in the year 1900? A. I did.

Q. Did you in 1900 have any occasion to visit it?

A. I walked down past the wharf one day and I seen Mr. James—

(Testimony of Frank Bach.)

Mr. BAYLESS.—We object to the balance of the answer.

The COURT.—Just answer yes or no.

A. I did.

Q. (By Mr. ROBERTSON.) And what was the occasion of your visit to it? [362—322]

Mr. BAYLESS.—We object to that as immaterial.

The COURT.—Objection overruled—it is preliminary, I suppose.

A. I walked down towards the wharf and went past and see Mr. James down there tying up—

Mr. BAYLESS.—Object to the balance of this testimony.

Q. (By Mr. ROBERTSON.) You say you went down past the wharf on the beach—what did you see going on on this piece of beach land at that time?

A. I seen Mr. James tying up a raft of lumber.

Q. Was that a raft or a scow of lumber?

A. Raft.

Q. That was in the year 1900? A. Yes, sir.

Q. What time of the year?

A. Oh, I don't just exactly remember—in August, I think.

Q. And when did you next—after the year 1900 did you have occasion again to visit that piece of beach land? A. I have.

Q. Have you ever had occasion to visit it at any time with Mr. James? A. I did.

Q. Just state the nature of those visits with Mr. James and the approximate times.

A. In 1900 Mr. James run the sawmill at Sheep

(Testimony of Frank Bach.)

Creek. In the fall of it he built a sawmill on Douglas Island and Mr. James and me were pretty good friends and he came in one evening and says, "I am taking a raft of lumber over, come on and go with me" and I went with him.

Q. When you say "come over" what do you mean—where did you come to?

A. To this piece of land.

Q. Where the present gridiron is located?

A. Yes, sir. [363—323]

Q. What, if anything, did you bring there?

A. Sometimes a scow and sometimes brought a raft.

Q. During how many years, or what parts of years, did you make such occasional visits to this particular piece of beach land?

A. Right up to the present time.

Q. And what was the last occasion you had to visit it with a raft of lumber belonging to Mr. James, or a scow of lumber?

A. Three years ago I went to work for Mr. James and I ran—and I fetched scows and rafts over here myself.

Q. Where did you land them?

A. On that gridiron.

Q. Then during the period from 1900 up to 1911 each year you had an occasion to visit this particular piece of beach land, as I understand it?

Mr. BAYLESS.—Object to that as leading.

The COURT.—Objection overruled.

(Testimony of Frank Bach.)

A. I think it was in 1912 when I was working for Mr. James.

Q. Then from 1900 up to 1912, during all the intermediate years, you say you did or did not have occasion to visit this particular piece of beach land?

A. I did.

Q. And I also understood you to say that during each one of those years you had occasion to come over with a raft or scow of lumber?

A. I used to come over with him.

Q. How many times would you think altogether that you visited that particular piece of beach land with scows of lumber belonging to Mr. James? I don't expect you to state definitely, but approximately.

A. Probably a hundred and fifty times.

Q. Probably a hundred and fifty times?

A. Yes. [364—324]

Q. Do you know the year that Mr. James' present gridiron was erected there? A. In 1906.

Q. Do you remember about what time of the year?

A. In the spring.

Q. Mr. Bach, referring your attention to the years—say to the period between September, 1901, and September, 1903, will you state what, if anything, you saw on that particular piece of beach land with regard to piling or piles? A. There was no piles.

Q. There were no piles there? A. No.

Q. And you are positive of that?

A. I am positive, yes, sir.

Q. Did you visit that piece of beach land at the var-

(Testimony of Frank Bach.)

ious stages of the tide or not—what I mean is, have you been there at various stages—

A. Yes, I come over here when it was low tide and anchored and got the lumber up on high tide.

Q. And you say there was no piling on there during the period from September, 1901, to September, 1903? A. Not that I seen any.

Q. Calling your attention specifically to what at this time would be the easterly end of the particular piece of land in controversy, was there a pile or not at about half way between high tide land and low tide land between September, 1901, and September, 1903?

A. I did not see any.

Q. If there had been one there do you think you would have seen it? A. Most assuredly.

Q. Do you remember whether or not there was any structure on this [365—325] piece of beach land that was used by Mr. James prior to the time the present gridiron was built?

A. There was a little platform up towards the wharf.

Q. Towards the wharf or the present street?

A. Up towards the wharf.

Q. That is, on the side towards—the sawmill side of this piece of land? A. Yes.

Q. And about how large was that platform?

A. I don't just exactly remember.

Q. Approximately?

A. It was big enough to unload lumber on.

Q. Who used that little structure—who did you see using it, if anybody?

(Testimony of Frank Bach.)

A. I seen the "Garnet" from Wrangell laying alongside of it.

Q. Did you ever see anybody else use it?

A. No.

Q. Before Mr. James built his gridiron there, Mr. Bach, what, if anything, did he have on this piece of beach land there?

A. He had a little platform there and there was some timbers used to lay the scow and raft on there so that when the tide went out it would settle down.

Q. What year was it you first saw that little platform being used by Mr. James?

The COURT.—Well, now, gentlemen, you are liable to get the Court confused—the upper Court confused by the indiscriminate use of the words "platform" and "gridiron." There is no testimony that I know of that Mr. James used any platform. Are you not talking about the first gridiron?

Mr. ROBERTSON.—I am talking about the first, or little, gridiron, from the old platform. [366—326]

The COURT.—Well, keep the distinction in your question, so you will not get it mixed up.

Q. (By Mr. ROBERTSON.) State what year it was you first saw Mr. James using the old, or first, gridiron, on that beach—just approximately, I don't expect you to give the exact date.

A. I couldn't even give you the exact year. The beach was pretty rocky there and I guess it was cleaned up, and I don't know whether it was 1902, 1903, or 1904; I couldn't say.

(Testimony of Frank Baeh.)

Q. In the year 1904 when Mr. James brought his scows over there, did he tie up the scow to anything?

A. There were a couple of piles there.

Q. And about where were those piles driven with reference to the first gridiron?

A. Well, right alongside of it, only down farther.

Mr. ROBERTSON.—That is all.

Cross-examination.

(By Mr. BAYLESS.)

Q. Mr. Baeh, I don't think you testified to anything prior to 1900, did you? A. No, sir.

Q. Were you working for Mr. James in 1900?

A. No, sir.

Q. What was your occupation then?

A. Merchant.

Q. City Marshal in Douglas?

A. No, merchant.

Q. At Douglas? A. Yes, sir.

Q. How did you happen to come over here in 1900?
[367—327]

A. How did anybody else happen to come over here—when I had business over here.

Q. Did you have business over here?

A. It was about a boat with Dutch Henry.

Q. And you came over on a raft—Mr. James' raft?

A. No, I didn't come over with Mr. James' raft; I came over on the ferry-boat and walked down there.

Q. Did you see any boundary lines that would indicate how much ground Mr. James was claiming there on the beach at that time?

Mr. ROBERTSON.—Object to that as not proper

(Testimony of Frank Bach.)

cross-examination. I haven't gone into anything except the use of the land and what structures he was using, if any, on the land.

The COURT.—Objection overruled.

Mr. ROBERTSON.—Exception.

A. No.

Q. (By Mr. BAYLESS.) Any posts?

A. No.

Q. You saw James unloading a scow of lumber there?

A. The wagon come right alongside and they loaded it up.

Q. It was unloaded from the scow?

A. From the scow and from the rafts too.

Q. Well, how much space did he occupy at that time? A. About the length of a raft or scow.

Q. How big was it?

A. Oh, there were scows in there about forty feet long and he brought rafts in that were probably longer.

Q. How many rafts did you see in 1900?

A. I seen one of them which come up from Sheep Creek; I see him there with it.

Q. Did you see anything else in 1900?

A. I did not.

Q. Do you know whether or not that raft was landed on the gridiron— [368—328] where the gridiron is now?

A. Approximately about there.

Q. Might be a little this way or a little the other way? A. Maybe.

(Testimony of Frank Bach.)

Q. Any piles there at that time?

A. I didn't see any.

Q. That was in the summer of 1900? A. Yes.

Q. That was the only time you saw a raft or scow there in 1900? A. That was the only time.

Q. How about in 1901?

A. In 1901 he ran the sawmill over there in Douglas and I used to be around the sawmill and sometimes he would say, "Come along with me to Juneau with the raft," and I went along with him.

Q. How frequently did you go across the channel to this piece of beach in 1901?

A. Probably about five or six times.

Q. Always landed in the same place?

A. About the same place, yes.

Q. How close to the same place—forty or fifty feet on either side?

A. I couldn't tell you how close it was—just about the same place.

Q. Was there any dock that you landed at?

A. No, landed there right on the beach and just in about the same place.

Q. Are you sure you landed in the same place?

A. There was a great big rock down there and I believe it is down there yet, and it was right close to that rock.

Q. Always landed close to this rock? A. Yes.

Q. Was that in the summer-time or winter time of 1901? A. Summer-time. [369—329]

Q. Did you ever see any small boats land upon that beach?

(Testimony of Frank Bach.)

Mr. ROBERTSON.—Object to that as not proper cross-examination.

Q. (By Mr. BAYLESS.) Did you ever see anybody else using that beach in 1900 and 1901?

A. No, I couldn't say. I would just come over and go right back again.

Q. You would just come over, land, and go right back? A. Yes.

Q. Do you know anything about it in the winter of 1901? A. No, I wasn't over here.

Q. Well, in 1902 were you on Douglas Island then? A. Yes.

Q. As a merchant there? A. Yes, sir.

Q. Do you know whether or not Mr. James landed scows or rafts on this property in 1902?

A. Yes, sir.

Q. How do you know it?

A. I was a pretty good friend of Mr. James and used to go down to see him when I closed up the store, and he would say: "Well, Frank, I have got to take a raft over; come along," and I went.

Q. How long would it take to unload?

A. Didn't unload—just brought it there and—

Q. Go back on a gas boat?

A. Yes, when we had one, and if we didn't, went over on the ferry.

Q. How often did you come over in 1903?

A. Oh, maybe about twelve, fifteen times or so.

Q. You spent considerable of the summer-time on the water? A. Yes.

Q. Did you see any other occupants of that beach

(Testimony of Frank Bach.)

in 1903? A. Not on that place. [370—330]

Q. In 1900, 1901, 1902, and 1903 did you ever examine that beach for sunken piles or old piles?

A. I had no occasion to examine it.

Q. Do you know whether or not there were other piles near where the Young wharf is now?

A. A couple of them there—used to tie up to those.

Q. You didn't do that in 1901, did you? A. No.

Q. Do you know whether there were any old piles between high and low water along the line of the present Young wharf in 1900 or 1901?

A. I never seen any.

Q. Will you swear they weren't there?

A. I wouldn't swear, but I never seen any.

Q. Did you examine that property for old piles?

A. No.

Q. It wasn't any part of your duty as Mr. James' guest to scrutinize that beach for old piles, was it?

A. No, sir.

Mr. ROBERTSON.—Object to that as being argumentative.

Q. (By Mr. BAYLESS.) In 1904 were you living on Douglas Island? A. Yes, sir.

Q. And did you come across with Mr. James in the same old way? A. Yes, sir.

Q. How often did you come across there?

A. Oh, I don't know; I can't just tell you exactly how often.

Q. About how often?

A. Probably fifteen or twenty times.

Q. About as often in 1904 as you did in 1903?

(Testimony of Frank Bach.)

A. Yes, somewhere around there.

Q. Was there any particular reason why you would remember coming [371—331] over in 1903 or 1904? A. No, no particular reason.

Q. Did you come over with Mr. James on his rafts and scows each year from 1901 down to the present?

A. No, not always.

Q. Did you come over each year? A. Yes, sir.

Q. Did you see any structures on the beach in 1904? A. There was a platform there.

Q. In 1904?

A. I think it was in 1904 or 1905, I don't remember.

Q. You are not sure? A. No.

Q. Then if the testimony should show that it was in 1905, you would probably agree with it?

A. Yes, sir.

Q. Well, that is the testimony. Do you know who occupied that platform? A. No, I do not.

Q. Did you say you saw the "Garnet" from Wrangell tied up at that platform? A. Yes.

Q. Did you see any of Mr. James' scows unloading on that platform? A. I have not.

Q. Were there any other structures on the beach during the time this old platform was there?

A. Any other structures?

Q. Yes, any other structures? A. Which way?

Q. Either way on this piece of property that is now claimed by Mr. James? A. No. [372—332]

Q. There wasn't any there at that time? A. No.

Q. Well, how long did that old platform stay there?

(Testimony of Frank Bach.)

A. Why, I believe it fell down that winter.

Q. The winter of 1905? A. Yes.

Q. Did you see it fall?

A. No; she wasn't there next year.

Q. Were you over there in the year 1905?

A. Down here?

Q. Yes. A. I was there.

Q. What happened in the spring or summer of 1906?

A. Mr. James put a big gridiron in there.

Q. In the very same place where the platform had stood? A. No.

Q. How far away from it?

A. Well, I don't just exactly remember. They put it just about the same place as the old gridiron was.

Q. Where the old platform was?

A. No, the old gridiron.

Q. Where was that old gridiron with reference to the platform?

A. It was up towards the wharf.

Q. Which wharf, the Carroll-Murray wharf?

A. Yes.

Q. Let us get this straight; was the gridiron between the platform and the Carroll-Murray wharf, or was the platform between the old gridiron and the Carroll-Murray wharf? A. How is that?

Q. Was the old platform between the old gridiron and the Carroll-Murray wharf, or was the old gridiron between the platform and the Carroll-Murray wharf? [373—333]

A. It was on the right-hand side.

(Testimony of Frank Bach.)

Q. Well, where was it?

A. Like this; the platform was here—the gridiron—and the platform was up here towards the Carroll-Murray wharf. (Indicating.)

Q. The platform was close to the Carroll-Murray wharf? A. Yes.

Q. And the old gridiron on down towards the sawmill? A. Yes, sir.

Q. That was the position? A. Yes, sir.

Q. Did you ever work for Mr. James?

A. I did.

Q. When did you work for him? A. In 1912.

Q. You are not working for him now, are you?

A. No, sir.

Q. Do you know who occupied that old platform?

A. I do not; I did not know.

Q. Do you know whether the Perseverance Company occupied it? A. I couldn't tell you.

Q. Do you know whether that lumber from Wrangell was for the Perseverance mill?

Mr. ROBERTSON.—We object to that. The witness has not testified about any lumber from Wrangell. It is not proper cross-examination.

The COURT.—I don't recall any such testimony.

Q. (By Mr. BAYLESS.) Didn't you say the "Garnet" came up from Wrangell with lumber and unloaded at the old platform? What did the "Garnet" have on board of her?

Mr. ROBERTSON.—Object to that. There was nothing said on direct examination about anything on board of her.

(Testimony of Frank Bach.)

A. She had lumber on her. She was a lumber schooner—lumber boat. [374—334]

Q. It wasn't a scow?

A. A regular lumber schooner, I think it was, to carry lumber from Wrangell up here.

Q. Did she have her own power? A. No.

Q. Are you sure that wasn't a scow?

A. Well, it was a regular schooner—had higher sides on her than a scow.

Q. Do you know whether or not that lumber was for the Perseverance mill or not?

A. No, I do not know who it was for.

Q. Do you know whether or not the Perseverance mill was being built in 1905? A. I believe so.

Q. Do you know how long it took to build the mill?

Mr. ROBERTSON.—We object to that as incompetent, irrelevant, immaterial, and not proper cross-examination.

The COURT.—That is going too far, Mr. Bayless.

Q. (By Mr. BAYLESS.) Do you know whether or not anybody else landed on that beach while Mr. James was landing there with his scows?

A. There might. If I brought a scow, it was just went in and went out again.

Q. You do not know anything about the property except the times you came over with Mr. James?

A. Yes.

Mr. BAYLESS.—That is all.

Redirect Examination.

(By Mr. ROBERTSON.)

Q. I understood you to say that you couldn't swear

(Testimony of Frank Bach.)

that there was an old pile there between September, 1901, and 1903, but can you swear positively, Mr. Bach, that you didn't see such a pile [375—335] there—do you swear that you didn't?

A. I say I didn't see no such a pile.

Q. And I understood you to say that you were there at various stages of the tide? A. Yes.

Q. Now, the old gridiron, as I understand, was the place Mr. James used at that time—prior to the present gridiron? A. Yes.

Q. And what you call the old platform was what you on one occasion saw the "Garnet" tied up in front of? A. Yes.

Q. Was Mr. James using the old gridiron at the same time this little platform was in position on the ground? A. Yes.

Mr. ROBERTSON.—That is all.

Recross-examination.

(By Mr. BAYLESS.)

Q. Did you ever see the platform in use?

A. No, I didn't see it in use.

Q. Did you ever see any rafts or scows of Mr. James landed on that beach on the old gridiron while the old platform was standing on the ground?

A. I certainly did, yes.

Q. What year was that?

A. It was in 1904 or 1905; I don't remember them dates.

Q. Well, how often did you see that done?

A. Oh, different times; I can't remember just how often and you couldn't, either.

(Testimony of Frank Bach.)

Q. That was a kind of a vacant beach down there at that time, wasn't it? [376—336]

Mr. ROBERTSON.—Object to that on the ground that it is not proper recross-examination.

A. We also went—

The COURT.—Just a moment. Objection sustained.

Q. (By Mr. BAYLESS.) Will you swear, Mr. Bach, that nobody else used this beach but Mr. James?

Mr. ROBERTSON.—We object to that as not being proper recross-examination.

The COURT.—It is not proper recross-examination, and it would be proper cross-examination, because he never testified to that in chief.

Mr. BAYLESS.—Never testified to what?

The COURT.—That nobody else but Mr. James used that beach.

Mr. BAYLESS.—That is right. I just wanted to get him to say that if he knew.

(Witness excused.)

(Whereupon the Court took a recess for ten minutes.) [377—337]

[Testimony of George E. James, for Defendants.]

GEORGE E. JAMES, a witness called and sworn in his own behalf, testified as follows:

Direct Examination.

(By Mr. GUNNISON.)

Q. Mr. James, state your name.

A. George E. James.

Q. Your residence?

(Testimony of George E. James.)

A. Douglas at present.

Q. And your occupation?

A. I am in the lumber business.

Q. Are you one of the defendants in this case?

A. I am.

Q. You are the defendant who is still defending the case? A. Yes, sir.

Q. Now, what was your occupation in 1900, Mr. James? A. Sawmill business.

Q. Where were you engaged in the sawmill business?

A. At Sheep Creek and also on Douglas Island.

Q. What time in 1900 did you begin work in the sawmill business at Sheep Creek?

A. The early part of spring and summer.

Q. Will you describe where Sheep Creek is for the purpose of the record; I think no one has specified that so far.

A. Sheep Creek is situated on the left-hand side of the Channel, situated about four miles from Juneau.

Q. On the same side as the City of Juneau?

A. As Juneau.

Q. Now, referring to the piece of tide land in controversy in this suit, please state whether or not you had anything to do with that in the summer or at any time in the year 1900. [378—338]

A. I used it constantly during the first part of the summer of 1900 in delivering lumber.

Q. How?

A. Principally in rafts.

(Testimony of George E. James.)

Q. Did you do anything with reference to the—did you do any work on it and, if so, what?

A. I cleared it of rocks and logs and all the debris that had gathered in there.

Q. Just where, or approximately where, with reference to what is known as the—I will withdraw that—do you know where the old Murray & Carroll wharf, so-called, is situated? A. Yes, sir.

Q. Do you know where Chief Johnson's house is, the old Chief Johnson house? A. Yes, sir.

Q. Do you know where the beach covered by what is now known as the Charles W. Young Dock is situated? A. I do.

Q. Now, where, with reference to these three structures, was the beach which you cleared in the summer of 1900?

A. I cleared up to the C. W. Young—that was known then as the Chief Johnson property, and a space there practically two hundred feet square from high-water mark down.

Q. How did you clear it?

A. By removing the boulders and rocks.

Q. Who worked with you?

A. I had several men in there, one in particular—a man by the name of Biernoth had charge of it.

Q. He is the man who has testified for the defendant? A. Yes, sir.

Q. Over what period of time were you engaged in clearing this?

A. Oh, the first part of that summer—in fact, we did a little [379—339] clearing pretty nearly

(Testimony of George E. James.)

every raft we took up; there would be logs that floated in there.

Q. How did you deliver the lumber at this place?

The COURT.—Do you mean in 1900?

Mr. GUNNISON.—Yes.

A. In rafts.

Q. For how long a period did you deliver from Sheep Creek?

A. All that summer till snow-fly that fall.

Q. You said you were also engaged in the sawmill business at Douglas during that year? A. Yes, sir.

Q. When did that commence?

A. Commenced somewhere in September or October, I think.

Q. And did you deliver any lumber from Douglas to Juneau? A. Very little, if any.

Q. Now, how often did you deliver a raft on this ground during the season of 1900?

A. There was from one to two rafts laying there all the time. I delivered in the neighborhood of fourteen thousand feet of lumber that summer.

Q. At Juneau? A. At Juneau.

Q. Over this beach?

A. Yes, sir, over that same place.

Q. How late in the fall—you said till snow-fall.

A. We operated quite late; I don't remember the month, but it must have been in November, if not later.

Q. Now, during that time, in the year 1900, how often were you on the ground personally?

A. In 1900?

(Testimony of George E. James.)

Q. Yes, sir. [380—340]

A. Oh, for the biggest part of the time—every day—I lived in town and walked back and forth.

Q. You lived in Juneau at that time?

A. Yes, sir.

Q. During that year was this ground or any part of it used by the Pacific Coast Steamship Company or the Pacific Coast Company—by the Pacific Coast Co. or by the Pacific Coast Steamship Co.?

A. Not to my knowledge.

Q. Did any vessels load and discharge freight at the Murray and Carroll wharf during that year, 1900, to your knowledge? A. No, sir.

Q. When you went on this ground did you—I will withdraw that—before going upon this ground and using it as you have testified in the year 1900, did you obtain permission of anyone to do so?

A. I did not.

Q. Did you put it to any use during the winter of 1900 and 1901?

A. I don't remember whether I used it or not.

Q. Where were you engaged in business in 1901?

A. In Douglas.

Q. In the same business? A. Yes, sir.

Q. Did you use this ground—state whether or not you used this ground, this piece of beach land in controversy, in the year 1901? A. I did.

Q. How did you use it? A. In the same manner.

Q. How frequently? A. Oh, quite frequently.

Q. Well, how often—how was lumber delivered, in rafts or scows? A. In rafts and scows both.

(Testimony of George E. James.)

Q. State how you discharged your scows and delivered your lumber there. [381—341]

A. I would leave the scow there and the teams would haul it off; would leave the raft there until it was hauled away.

Q. Then you would lay your raft or your scow on the beach and moor it and they would come and take it away; is that what you mean? A. Yes, sir.

Q. Was there any structure there at the time you went on it in 1900? A. There wasn't.

Q. What was the nearest structure on the beach to you at that time? A. The Carroll wharf.

Q. How far away was that?

A. Oh, I should judge 200 feet—300.

Q. I beg your pardon, I didn't understand you.

A. Probably a little over 200 feet.

Q. From where?

A. From where I was landing.

Q. In the year 1901 was there any structure on this piece of ground in controversy?

A. There wasn't.

Q. And you say you used scows and rafts in that year to deliver lumber? A. Yes, sir.

Q. Over what period of time did your use of this ground run in the year 1901?

A. Over all of the summer and part of the winter.

Q. When did you begin, Mr. James, to use it?

A. That year?

Q. Yes, sir, 1901.

A. Oh, generally we got started in May, sometimes

(Testimony of George E. James.)

the latter part of April; somewhere in the first part of the year.

Q. Beginning of the sawing season?

A. Yes. [382—342]

Q. Now, was the Murray and Carroll wharf used in that year as a landing place for vessels or for discharging vessels? A. No, sir.

Q. How often were you on this ground during the summer personally?

A. Oh, quite frequently; sometimes with every shipment.

Q. Now, how were your rafts and scows moored, Mr. James?

A. Oh, they were moored to piles and shore lines; we had one large rock for an anchor at that time.

Q. For an anchor?

A. Yes, to hold them in a certain place.

Q. In the year 1901 what, if any, piles were there on this piece of ground, or in the immediate vicinity of it?

A. There was two piles in the upper right-hand corner coming in. That was the only piles that was in there until you got up to the old dock.

Q. Those piles on the upper right-hand corner—you mean looking—approaching it from the Channel? A. Yes, sir.

Q. That would be in the southeasterly corner?

A. Southeasterly corner, yes.

Q. Where was that located, if you recollect, with reference to the line of high tide?

A. Why at that time—I should judge they were

(Testimony of George E. James.)

practically in the line of high tide.

Q. What do you mean, extreme high or mean tide, or what? A. Practically extreme high tide.

Q. Was there any pile on a line with those two piles or anywhere within a radius of a few feet on either side of the line of those piles between them and deep water? A. No, sir.

Q. Were there any posts or mounds on that ground or on this piece of tide land used for marking?
[383—343]

A. Not to my knowledge.

Q. What periods or stages of the tide were you on this ground?

A. On all stages of the tide, on high and low.

Q. Did you at any time during your occupancy and use of that ground see any pile—did you at any time during your use and occupancy of that ground up until 1904 see any piles or marks or stakes used to mark boundaries on this ground other than the two piles to which you testify? A. I have not.

Q. Now, in the year 1902 where were you engaged in business? A. On Douglas Island.

Q. And what use, if any, did you put this ground to?

A. For the same purpose—of landing lumber in Juneau.

Q. How often did you use it?

A. I couldn't say; quite frequently.

Q. During that time was the Murray and Carroll wharf used as a landing place for vessels?

A. No, sir.

(Testimony of George E. James.)

Q. Did the Pacific Coast Company use this piece of tide lands which is in controversy here for any purpose?

A. No, sir, I never saw anyone use it in that year.

Q. Did any one else use it besides you, to your knowledge? A. I think not.

Q. Now, in the year 1903 where were you engaged in business? A. In Douglas.

Q. And what about the use of this piece of tide lands? A. Well, same as before.

Q. And what about its use by the Pacific Coast Company or the Pacific Coast Steamship Co.?

A. They didn't use it.

Q. Did you put the ground to any use and, if so, what, in the winter of 1902-3? [384—344]

A. Only for the purpose of landing lumber and I don't remember whether I had my scow moored there in 1903 or not; I hardly think I did. It wasn't a very desirable place to land at that time.

Q. In the winter of 1903 and 1904 did you use this ground? A. Yes, sir.

Q. For what purpose and use?

A. For landing lumber.

Q. And how frequently? A. Quite frequently.

Q. In the spring of 1904 were any improvements put on this ground?

A. Drove some piles in 1904; drove two.

Q. Where were they?

A. They were driven on the line between C. W. Young—or it turned out to be the line; it was un-

(Testimony of George E. James.)

intentional at the time—but driven for the purpose of tying a scow to.

Q. How was the line in which they were driven, at right angles with it or parallel?

A. At right angles.

Q. Are they still there?

A. I think they are still in that line, if I am not mistaken.

Q. Now, to what use did you put this ground in the summer and fall of 1904?

A. For delivering lumber.

Q. In what manner? A. With scows and rafts.

Q. In the same manner to which you have testified as to preceding years? A. Yes, sir.

Q. Did the Pacific Coast Company or the Pacific Coast Steamship Company use the Murray and Carroll wharf as a place for landing their vessels?
[385—345]

A. No, sir—do you mean by vessels, steamers, plying between here and Seattle?

Q. Yes, I mean vessels of the steamship company.

A. No, sir.

Q. Do you know whether or not the buildings on that wharf were put to any use in that or the preceding years and, if so, what?

A. I think there were some tenants there; there was a boat-builder there at one time.

Q. What time was that?

A. I don't remember the years they were in there; I don't remember the years up to the time the sardine factory went in.

(Testimony of George E. James.)

Q. When did that go in?

A. I think that was in 1905.

Q. Well, now, to what other use were the buildings on the old Murray and Carroll wharf structure put in 1904 and prior thereto besides that of a boat-building establishment?

A. There might have been some other tenants in there, I don't know.

Q. You do not know? A. No.

Q. Well, now, to what use did you put this ground in the winter of 1904 and five?

A. Well, for landing purposes.

Q. In the same way and manner in which you have already testified? A. Yes.

Q. Now, when did you commence to use this ground in the year 1905?

A. Early in the spring of 1905.

Q. How did you use it?

A. In the same manner as before, for landing.

Q. Did you put any improvements on it or structures on it? A. I put a small gridiron on in 1905.

Q. State where that was, Mr. James, with reference to the piles which you say were put on there in the preceding year. [386—346]

A. Right alongside of them on the uptown side.

Q. About what were the dimensions of that dock?

A. I don't remember exactly. Somewhere in the neighborhood of eighteen or twenty feet long and four in number.

Q. How were they laid—built? How was each of the timbers laid?

(Testimony of George E. James.)

A. One end was embedded in the ground and one end supported with piles and posts.

Q. You say embedded in the ground—did the eighteen-foot timbers parallel the beach or did it lay at right angles with the beach?

A. I don't just recall how that was at the present time—yes, they were laying paralleling the beach.

Q. Paralleling the beach? A. Yes, sir.

Q. I hand you a map marked Defendant's Exhibit "A," July 18, 1914, and ask you to look at it and state where on that, with reference to the other structures thereon represented or indicated, this small gridiron, or, as it has already been designated in the case, old gridiron was situated. A. Yes, sir.

Q. Is the place where it was indicated and marked "M" correct?

A. The location as to the Chief Johnson line is right, but it is inshore a little farther.

Q. You mean it is—

A. Up this way towards the beach—the gridiron was up here farther.

Q. It was up farther on the ground?

A. Yes; the Davidson gridiron stood right in here.

Q. Mark where the Davidson platform stood.

A. I think there was five. I am not positive about that gridiron running this way. (Witness indicates on map.)

Q. You mean the caps extended—

A. Inshore from—

Q. At right angles from the beach line? [387—347] A. From the edge of this driveway.

(Testimony of George E. James.)

Q. From the inside of where your driveway now is?

A. Yes, sir; my gridiron laid right in here.

Q. Before you mark that, mark this that you put on here as the Davidson platform "D. P."

A. (Witness marks map.)

Q. Now, where did your gridiron lay with reference to that? A. Right in about here.

Q. Where is that—close to the Young line?

A. These piles, I think, are here—stand right in here.

Q. The two 1904 piles you have indicated?

A. Right here.

Q. Mark those "J."

A. (Witness marks map.)

Q. Now, mark the representation of your gridiron "J. G."

A. (Witness marks map.) That is it to the best of my recollection; might be out a little farther or in a little farther.

Q. Now, about what time in the year did you build this old gridiron of yours?

A. Sometime in the first part of the summer; I don't remember the exact date.

Q. When, with reference to the time the Davidson platform was constructed?

A. I think it was about the same time, if not later, as the time the Davidson, or it might have been a little before they built it.

Q. Do you remember about what time the Davidson platform was built? A. Yes, sir.

Q. About what time?

(Testimony of George E. James.)

A. In May and June, I think it was, 1905.

Q. And what was done with that—to what use was it put?

A. For piling lumber onto. [388—348]

Q. Your lumber? A. No, sir.

Q. Whose?

A. I guess it belonged to the Wrangell sawmill; at least they finished it.

Q. How many rafts of lumber were delivered there—I will withdraw that—how was this lumber that was put on there delivered? A. On barges.

Q. How many barge loads were delivered there?

A. Well, it was either five or six.

Q. And over what period of time did its use in that way continue?

A. Oh, from the time it was finished up until along in—I should say August or September.

Q. What was the character of that Davidson platform?

A. It was a structure built with piles set in the ground and capped and braced with bracing.

Q. What do you say as to its character—as to whether it was permanent or temporary in nature?

A. It was of a temporary nature, very frail.

Q. How long did it last?

A. Well, it fell down on the second load they brought in; then it was reconstructed and there was some piles driven in front of it to support it, and it lasted all that summer, but it was gone in the spring.

Q. What spring?

A. The following spring, which was 1906.

(Testimony of George E. James.)

Q. Now, during the year 1905, state whether or not you used this piece of tide land in controversy?

A. In 1905?

Q. In 1905. A. Yes, sir, I used it.

Q. State whether or not you used it—over what period did you use it? [389—349]

A. During all that summer.

Q. That is, the summer this old Davidson platform was put in? A. Yes, sir.

Q. Now, state whether or not the placing of that platform on the ground in controversy prevented you from using this ground?

A. No, it didn't prevent me from using the ground.

Q. You still use it?

A. I still use it. It hindered me some.

Q. Was there a road by this place or did the public road pass this place on the beach at that time, in the year 1905?

A. No, there was no road passed it. There was a road made by me down to it past the Carroll wharf.

Q. What was the nature of that road?

A. Just the common beach; cleared off some boulders and rocks so we could get through there.

Q. You cleared the beach?

A. Yes; made a road to get down to my rafts and scows.

Q. From where?

A. From the front of the wharf.

Q. The Carroll wharf. There was a road down to that, but that was practically as far as the road went? A. Yes, sir.

(Testimony of George E. James.)

Q. The front of it—what do you mean by that?

A. The unland end of it.

Q. Was there a plank road down in that vicinity at that time? A. No, sir.

Q. Well, how far did the plank road extend toward that point?

A. I think the plank road in 1905 extended to the Pacific Coast property—to their line, upper line, in front of Isa Goldstein's building; the street stopped there and there was an incline put in down to the beach. [390—350]

Q. Now, there was no plank road in there that year? A. No, sir.

Q. What was the character of the road down there after you left the plank road?

A. Well, it was a pretty rough beach down there for a piece.

Q. And was it accessible at all stages of the tide?

A. Low tide.

Q. Now, how long did you use that piece of tide lands during that year?

A. Well, all the summer and part of the winter.

Q. And to what use, if any, did you put it in the winter of 1905 and six?

A. I used it some in 1905 for landing purposes.

Q. In the winter? A. In the winter, yes.

Q. In the spring of 1906 what time did you commence to use it again. A. In May.

Q. What was on this ground in controversy when you commenced to use it in May, 1906?

A. Well, my little gridiron was on there.

(Testimony of George E. James.)

Q. Anything else? A. Not that I saw.

The COURT.—Which gridiron?

Mr. GUNNISON.—The little one, the old one, the one that is marked “J.G.”

The COURT.—Q. You say your old gridiron was there in 1906?

A. Yes, sir, that was there in 1906.

Q. (By Mr. GUNNISON.) Was there anything else there?

A. Not that I can remember in the spring when we commenced work.

Q. Was that platform there?

A. No, sir. [391—351]

Q. What had become of it, if you know?

A. It was gone. I think the timbers was hauled up to the—

Mr. BAYLESS.—Just a minute. We object to that as not responsive.

Mr. GUNNISON.—We submit that it is responsive, but if he doesn't know, why all right.

Q. You say it was not there?

A. No, sir, it wasn't there.

Q. What did you do in the spring of 1906 with reference to that ground?

A. I built a new gridiron that spring.

Q. Where?

A. Over the—over part of the little gridiron that I had and in front of the platform that had been built there the year before.

Q. Is that in approximately the same position that the gridiron is upon this “Defendant's Ex. A”?

(Testimony of George E. James.)

A. Exactly the same as the map I had here.

Q. Which I have just shown you? A. Yes, sir.

Q. That is a correct representation of the location of that gridiron?

A. The gridiron built that spring, yes.

Q. How much of that gridiron was built that spring?

A. What is marked "gridiron" was built that spring.

Q. Where was the roadway, the plank roadway, at that time? A. In 1906?

Q. Yes, sir, when you built the gridiron?

A. Over, up there by Goldstein's store.

Q. Did you build the platform behind the gridiron at the same time?

A. There was a temporary platform built behind the gridiron.

Q. Who built it? A. I did. [392—352]

Q. For what purpose?

A. For unloading the scow when I wanted to use the scow before the lumber was hauled away.

Q. Will you describe how that gridiron was built?

A. The gridiron was piles driven in the ground with a pile-driver, sawed off and capped and bolted to the piles so they wouldn't float off, and I think there are seven of them in number.

Q. Seven bents? A. Seven bents.

Q. By bents you mean a row of piles with caps on it? A. Yes, sir, that is a bent.

Q. What is approximately—I will withdraw that—how far apart are the bents—what are the centers?

(Testimony of George E. James.)

A. Ten feet centers.

Q. Ten feet from the center of one bent to the center of the other? A. Yes, sir.

Q. And there are seven bents? A. Seven bents.

Q. How was the platform to which you have referred built?

A. The platform was built with four stringers from set piles inshore from the gridiron.

Q. Parallel with the gridiron?

A. Alongside the gridiron.

Q. And what did you use the gridiron for?

A. For landing scows on.

Q. What did you use the platform for?

A. For unloading lumber off the scows.

Q. On the platform itself? A. Yes, sir.

Q. How was lumber taken from the platform?

A. Loaded on wagons and hauled away. [393—
353]

Q. Where did the wagons stand?

A. Alongside of it.

Q. How long was the gridiron and platform used in that summer? A. All that summer.

Q. Until what time?

A. Oh, it was quite late in the fall that summer—quite a little business during all that fall and winter.

Q. When was the road built through?

A. In 1906.

Q. What time in the year?

A. In October and November; probably commenced in September, latter part of September.

(Testimony of George E. James.)

Q. Did you build the approach to the road that year?

Mr. BAYLESS.—Object to that as leading.

The COURT.—It is leading.

Q. (By Mr. GUNNISON.) When did you build the approach to the road?

Mr. BAYLESS.—Object to that as being suggestive.

Mr. GUNNISON.—Well, I will withdraw that.

Q. State whether or not an approach was built to the road from your platform?

Mr. BAYLESS.—Object to that as being suggestive.

The COURT.—Yes, I think it is suggestive. Ask him how he got from the platform to the plank road.

A. By constructing a driveway and an approach to the street.

Q. (By Mr. GUNNISON.) When was that constructed? A. Early the following spring.

Mr. BAYLESS.—Q. What spring was that?

A. 1907.

Q. (By Mr. GUNNISON.) Returning to the year 1906, was the gridiron and platform which you built used by any person other than yourself?

A. During what period? [394—354]

Q. During the year 1906? A. No, sir.

Q. And how frequently during that year did you use that piece of tide lands and the gridiron?

A. During the summer months; it is hard to say, but practically continuous—as fast as I could run it over and bring it back.

(Testimony of George E. James.)

Q. Where were you engaged in business at that time? A. Douglas.

Q. Have you been engaged in business at Douglas since 1901? A. 1900.

Q. What is the character of the business?

A. Lumber business.

Q. Sawmill? A. Yes, sir.

Mr. GUNNISON.—I am not sure, your Honor, from the testimony of Mr. Swan's whether the question as to whose lumber passed over that wharf in 1906—Mr. Swan testified to it, and I don't want to get anything in the case in chief that would come in our sur-rebuttal.

The COURT.—The testimony of Mr. Swan regarding lumber passing over the wharf?

Mr. GUNNISON.—Well, over that tide land in 1906.

Mr. BAYLESS.—I think he testified that it was the Perseverance lumber, is my recollection of it. I don't remember whether it was in our case in chief or rebuttal, but I have no objection to that question.

Mr. GUNNISON.—I guess that was in rebuttal.

Q. To what use did you put that ground, if any, in the winter of 1906 and seven?

A. It was used for landing purposes and the pile-driver was on there one year; I don't remember whether that was in 1907 or 1908—I think it was in 1907. [395—355]

Q. When did you commence to use this ground and gridiron to which you have testified having constructed, in the year 1907?

(Testimony of George E. James.)

A. In the spring, probably as early as May or probably a little earlier.

Q. I think you testified that in the spring you built the westerly approach or driveway? A. Yes, sir.

Q. That is, the driveway that comes toward town?

A. Yes, sir.

Q. Now, what time in the spring did you build that? A. I think it was in May.

Q. Did that all stand on the ground claimed by you or was part of it on some other ground?

Mr. BAYLESS.—Just a minute. We object to that as being open to all the known objections.

The COURT.—I don't see any objection to that.

Mr. BAYLESS.—There is no testimony here, if the Court please, to show how much Mr. James' claim was at that time.

The COURT.—The question is whether it stood on the ground he did claim.

A. Yes, sir.

The COURT.—Now, just a moment. That answer doesn't answer anything, because the question is: "Did it do this, or did it do that"? What do you mean by "Yes, sir"?

A. It stood on the ground claimed by me.

Q. (By Mr. GUNNISON.) The approach?

A. The approach.

Q. All of it?

A. All of it with the exception of one little piece of the approach.

Q. Where was that?

A. That is inshore in connection with the street.

(Testimony of George E. James.)

Q. Is that represented on this map? [396—356]

A. I don't know; very likely it is.

Q. Just mark that with a pencil, the approach to which you refer, and mark it "V."

A. Just mark down the lines with a pencil so it will be heavier? You want this marked with a "V"?

Q. Mark the section that was on somebody else's land.

A. This is the section here. There is a triangular piece right in here. (Witness indicating on Defendant's Ex. "A.")

Q. (By the COURT.) That is on ground that you don't claim? A. That I don't claim.

Q. (By Mr. GUNNISON.) Whose ground was that?

A. I don't know; I suppose it belonged to the Pacific Coast Company.

Q. Did you get permission to use that from the Pacific Coast Co.? A. Yes, sir.

Q. Please state the circumstances.

A. I asked Mr. Swan if I could tear out the corner of that to connect my driveway.

Q. And what was said about that?

A. "Go ahead" was the answer he gave me.

Q. And that was all the conversation you had with reference to that? A. Yes, sir.

Mr. BAYLESS.—Object to that as leading.

Q. (By Mr. GUNNISON.) Well, state whether or not you had any further conversation with Mr. Swan about it?

A. I did not.

(Testimony of George E. James.)

Q. During what part of the year 1907 did you use this ground—I will withdraw that question—you do not now claim this piece of ground to which you have just testified?

Mr. BAYLESS.—Object to that as leading.

Q. (By Mr. GUNNISON.) Do you, or do you not, claim this piece of ground that you have just testified to and marked “V” on this map? [397—357]

A. I do not claim it.

Q. Now, state over what period of time in the year 1907 you used this land in controversy and the grid-iron, platform, and approach to which you testified as having constructed thereon?

A. It was used practically all summer and after the approach was put in it was used more or less during the winter, all winter.

Q. Now, in the year 1908 what was done with reference to that piece of ground?

A. It was used for the same purpose as before.

Q. During what period of time?

A. From the commencement—spring on till late in the fall.

Q. And what about the years 1909, 1910, and 1911?

A. Just the same.

Q. 1912? A. The same.

Q. 1913, up to August? A. The same.

Q. Now, did you build any other structure on there in the year 1912?

A. In 1912 I built an easterly approach to it.

Q. What portion of that is on your own ground and what portion on some others?

(Testimony of George E. James.)

A. I think there is in the neighborhood of eight feet of that approach on the ground and the balance is on C. W. Young's ground.

Q. Now, during this period from 1900 until the time when this injunction was served on you, or until this action was commenced rather, had the Pacific Coast Steamship Company or the Pacific Coast Company landed any vessels at the Murray and Carroll wharf to your knowledge? A. They did not.

Q. What was the condition of that wharf in the year 1900, if you remember? [398—358]

A. Well, it was in bad condition in 1900. The one section of it was giving away then, that is the section connecting the cribbing with the outside of the dock.

Q. The cribbing, that was a portion of the structure inshore? A. Yes.

Q. What was the condition of the dock in 1903, or the wharf?

A. I think that section was down entirely then and the outer portion of the wharf still stood.

Q. What was its condition in 1904?

A. It was getting worse all the time.

Q. In 1905 and six?

A. In 1906 or 1907 a portion of the main dock itself fell down.

Q. (By the COURT.) Was it ever put up again?

A. No, sir, it has been tore out right along. They removed part of the cribbing this summer.

Q. (By Mr. GUNNISON.) In 1913 you had started construction work on the ground in controversy in this case; please state and explain to the

(Testimony of George E. James.)

Court what the character of the work was which you proposed to do, from which you were restrained by the order of the Court?

Mr. BAYLESS.—We object to that question as leading and suggestive.

The COURT.—I don't think it is either one—he has asked him to describe—what is leading about it?

Mr. BAYLESS.—It is just a little more than suggestive.

The COURT.—You are suing for an injunction, aren't you?

Mr. BAYLESS.—Yes.

The COURT.—And you set forth what the defendant is going to do?

Mr. BAYLESS.—Yes.

The COURT.—Very well, isn't it perfectly proper for [399—359] the defendant to say what he is going to do?

Mr. BAYLESS.—Judge Gunnison, instead of asking him, said “You made certain improvements.”

The COURT.—Certainly; that is just preliminary—what are you going to do? Proceed.

A. Why, business was increasing and I was handling considerable lumber. My gridiron would only accommodate one scow and I have four scows—I have five scows—and I wanted to place another gridiron on the other side and haul from both of them at the same time.

Q. (By Mr. GUNNISON.) Will you mark on this map or plat, Defendant's Exhibit “A,” your

(Testimony of George E. James.)

proposed improvements or structures on this ground?

A. (Witness indicates on map.)

Mr. BAYLESS.—We object to that as incompetent and irrelevant—I believe your Honor sustained the objection of Judge Gunnison when I tried to get in a map showing the contemplated improvements by the Pacific Coast Company.

The COURT.—Yes, but you were developing your side of the case.

Mr. BAYLESS.—This is a defense to an injunction suit and he is developing—

The COURT.—Very well, you have the right of rebuttal, haven't you? You were putting it in in chief to develop your side. When you come to rebuttal, it will be a different proposition, but your case in chief was your case against him, consequently it was immaterial.

Mr. BAYLESS.—Judge Gunnison, is this your affirmative defense—your case in chief on your affirmative defense?

Mr. GUNNISON.—Yes.

Q. (By Mr. GUNNISON.) Now, mark that “N.I.”

A. (Witness indicates on map.) [400—360]

Q. What is that?

A. It is a gridiron and a driveway.

Q. How is that gridiron to extend with reference to the beach line? A. Running—

Q. Parallel to it or at right angles?

A. The gridiron running at right angles to the

(Testimony of George E. James.)

beach line and the driveway running at right angles to the approach and also the driveway here, so that you can come down here and drive out here (indicating).

Q. In other words, so you can use the same approach—

A. Same approaches for the two gridirons.

Q. Now, what do you say as to what the effect would be on your use of this ground if the Pacific Coast Company should build a wharf across the face of it?

A. It would render it useless for my purpose.

Q. Why?

A. I wouldn't be able to get in and use it.

Q. With what? A. With scows and boats.

Q. Where wouldn't you be able to get in from?

A. Because their wharf—the front of it would extend and along—on the left-hand side; the C. W. Young wharf is on the right-hand side.

Q. You say in front—you mean between it and what, between your gridiron and that wharf?

A. And the wharf they are proposing to build.

Q. Deep water, is that what you mean?

A. Deep water.

Q. During the time you have used this ground and occupied it as you have testified, state whether or not you have sought or been given permission to use it by any person?

A. I don't understand that question. [401—361]

Mr. GUNDERSON.—Read the question, please.

(Q. read by stenographer.) During the time you

(Testimony of George E. James.)

have used this ground and occupied it as you have testified, state whether or not you have sought or been given permission to use it by any person?

A. I have not.

Mr. GUNNISON.—Now, your Honor, in the depositions which we have taken—two of them—and which have been offered in chief, there is some testimony with reference to the use of this ground by the Perseverance—the delivery of lumber to the Perseverance over this ground. There has been some testimony, as I recall it, by Mr. Swan with reference to the delivery of lumber to the Perseverance, and I think it is really a part of our case in sur-rebuttal, but the case is so confused in my mind now that I am not sure, and if your Honor thinks I would be precluded from offering it later, I would like to ask for permission now.

The COURT.—I cannot possibly look ahead and say what is going to be sur-rebuttal. The only question so far as the examination of this witness is concerned is to develop your case in chief. You can put him on again if you think it is sur-rebuttal.

Mr. GUNNISON.—Of course, the testimony of Mr. Swan—I guess that was in his rebuttal.

Q. Did you ever deliver any lumber—I will withdraw that—State whether or not during the time you have used and occupied this ground which you have testified to, you have ever delivered any lumber over it to the Perseverance Company, or what was known as the Perseverance Company here? A. Yes, sir.

Mr. BAYLESS.—Object to that as irrelevant, in-

(Testimony of George E. James.)

competent, and immaterial. That has nothing to do with this case.

The COURT.—It shows the usage. Objection overruled. [402—362]

Q. (By Mr. GUNNISON.) Now, when did you commence doing that, Mr. James?

A. In August, 1908.

Q. And over what period of time did you deliver lumber for the Perseverance on that gridiron?

A. The balance of 1908 and 1909 and up to the time—well, up to last year, more or less.

Q. Now, did you ever give the Perseverance—state whether or not you had ever given to any person permission to use this gridiron and piece of beach during these years to which you have testified?

Mr. BAYLESS.—Object to that as incompetent and irrelevant. That has nothing to do with this case and is a self-serving declaration.

The COURT.—It wouldn't be admissible in your case in chief, Judge Gunnison.

Mr. GUNNISON.—From that testimony—of which this is corroborative—in those depositions—

The COURT.—It has never been attacked yet.

Mr. GUNNISON.—No, that is right—I was confused about that matter. (After a pause.) Mr. Robertson suggests, and it seems right to me, that we probably have a right to show these as acts of ownership by Mr. James during this period of time.

The COURT.—To prove as an act of ownership that you never gave anybody else permission?

Mr. GUNNISON.—No, we are trying to prove that

(Testimony of George E. James.)

we did give others permission.

The COURT.—Read the question.

(Q. read by Stenographer.) Now, did you ever give the Perseverance—state whether or not you had ever given to any person permission to use this grid-iron and piece of beach during these years to which you have testified. [403—363]

The COURT.—It is probably my own mistake—I thought you intended to draw out that he never had given any permit. He may answer the question.

A. Yes, sir.

Q. (By Mr. GUNNISON.) State some of the persons to whom you have granted permission to use it and under what circumstances and when.

A. Why, Mitchell.

Q. Who was Mitchell?

A. Superintendent of the Perseverance Mining Co.

Q. John R. Mitchell?

A. Yes, sir.

Q. State the circumstances under which it was given.

A. He got permission for removing some machinery down to the new power-house.

Q. When was that?

A. I couldn't tell you the date.

Q. From whom was that permission obtained?

A. From me.

Q. Was that between January 1, 1906, and August, 1913? A. Yes, sir, between that time.

Q. State any other persons to whom you have given permission. A. I gave Mr. Harper—

(Testimony of George E. James.)

Q. Who was Mr. Harper?

A. Superintendent or manager of the Nevada Creek properties at that time.

Q. Where are they located?

A. Below the Ready Bullion on Douglas Island.

Q. Do you remember when that was given?

A. Well, it might have been in 1908 or 1909; I don't know.

Q. From whom was that permission obtained?

A. From me. [404—364]

Q. And was the ground used by those men pursuant to that permission? A. Yes, sir.

Q. Did anything occur during the Harper use—during the use of it by Mr. Harper and his company?

A. Mr. Harper put a heavy scow on there and broke it down for me during that time.

Q. Who repaired it?

A. Harper repaired it.

Q. At whose request? A. At mine.

Q. Did you grant permission to anyone else to use it? A. Yes, lots of them.

Mr. BAYLESS.—It is understood that this all goes in over our objection?

The COURT.—No, sir, because you didn't object to it.

Mr. BAYLESS.—I thought I objected to it.

The COURT.—I don't think so; on the contrary, I permitted you to prove your permission to Mr. Messerschmidt,—I supposed for that reason you never objected to it.

Q. (By Mr. GUNNISON.) Well, now, who else—

(Testimony of George E. James.)

The COURT.—The record will show it, Mr. Bayless, if you did.

Q. (By Mr. GUNNISON.—To what other person?

A. To Ed Webster, Bert Gabbs—oh, there are so many it would be awfully hard to name them all.

Q. That is, within this period?

A. Within this period, yes, sir.

Q. State whether or not this tract was used pursuant to that permission by these people.

The COURT.—Now, Mr. Bayless, if you want to object to that question, make your objection.

Mr. BAYLESS.—I object to the question. [405—365]

Mr. GUNNISON.—I won't ask it—

The COURT.—Very well, I sustain the objection.

Mr. BAYLESS.—Thank you, sir.

Q. (By Mr. GUNNISON.) State to the Court, please, what the value of the improvements—what is the value of the improvements you have placed on this ground?

A. Oh, it would be hard to say. It has been repaired and so much work done on there, so that the actual cost it would be hard to say, but I should judge it couldn't be replaced short of a thousand dollars.

Q. As it stands?

A. As it stands—maybe more.

Q. During the period that you have been in possession, has anyone dispossessed you of the ground or attempted to dispossess you of it, or ordered you off of it?

(Testimony of George E. James.)

A. No, sir, not until this suit was started.

Q. That was when? A. In 1913.

Mr. GUNNISON.—That is all.

(Whereupon court adjourned until 9:30 A. M., July 21, 1914, when court reconvened pursuant to adjournment.)

Mr. GUNNISON.—May it please your Honor, there are one or two questions I would like to ask Mr. James before I close the direct examination.

The COURT.—Very well, take the stand, Mr. James.

Q. (By Mr. GUNNISON.) Mr. James, in the complaint it is alleged,—or in the affirmative answer you have alleged that the Pacific Coast Company has sold by various certain forms of conveyance—deeded to the Town of Juneau—that the company had deeded to the town and dedicated a strip off the westerly portion of Blocks R, S and T—Where do Blocks R, S and T, lie with reference [406—366] to the ground in controversy?

A. Inshore and right back of the gridiron.

Q. They are the upland?

A. They are the upland.

Q. Which is the westerly portion?

A. The end adjoining the water.

Q. That is, the end abutting on the line of high tide? A. Yes, sir.

Q. And does the street extend over the line above the line of high tide there?

Mr. BAYLESS.—Object to that as leading.

Q. (By Mr. GUNNISON.) State whether or

(Testimony of George E. James.)

not—I withdraw the former question—state what the situation of the street is at the point where the ground in controversy is situated, with reference to the line of high tide.

A. It is situated below high tide.

Q. Entirely below? A. In places.

Q. Does it extend over above the line of high tide anywhere across the face of this—

Mr. BAYLESS.—Object to that as leading.

The COURT.—Yes, it is leading.

Mr. GUNNISON.—I withdraw the question.

Q. You say it is in places; what do you mean by that?

A. Well, the meander line, shore line, would probably run down—there is a little bight in just where the gridiron is, but on the last part of it, I think the street is on part of the upland.

Q. You mean the structure?

A. The structure of the street, yes.

Mr. GUNNISON.—That is all.

The COURT.—Judge Gunnison, this Defendant's Exhibit "A" hasn't got the direction of the compass on it and it is [407—367] impossible to tell directions. Who made it? By whom did you introduce Defendant's Exhibit "A"?

Mr. GUNNISON.—By Mr. Webster, I think. The directions of the compass are on this.

The COURT.—That is one of the plaintiff's exhibits.

Mr. GUNNISON.—I know, but there is no controversy about the way it lies on the ground.

(Testimony of George E. James.)

Mr. BAYLESS.—Who made that plat, Judge?

Mr. GUNNISON.—Wettrick & Hill. The street line was used as the basis of that survey, the present street. Is there any controversy about the position of the compass there, Mr. Bayless?

Mr. BAYLESS.—I haven't examined it closely, Judge.

Mr. GUNNISON.—With your Honor's permission, we will withdraw that and have the points of the compass indicated on it by the engineer.

The COURT.—Very well. If this map is to be relied on—Before you close your case, Judge Gunnison, I wish you would call Mr. Wettrick, the man that made the map, and let him identify it and let him mark the directions—the same way with yours, Mr. Bayless. I am not sure by whom you identified this map.

Mr. BAYLESS.—I think I put that in with Mr. Ewing's testimony. I will say this, that the survey was made by a Mr. Muir, who was the Pacific Coast Company's surveyor in Seattle, residing in Seattle, and it will be impossible for me to prove the accuracy of it by him. I put it in more as a picture than anything else. As a matter of fact, it is a correct representation of the ground, but I haven't the surveyor who can testify to its accuracy.

The COURT.—Your map doesn't purport to be on a scale, as far as that is concerned—Yes, it does, 50 feet to one inch.

Mr. BAYLESS.—That is a representation of the recent subdivision of the town called the Pacific Coast Addition.

(Testimony of George E. James.)

The COURT.—Very well, proceed. [408—368]

Q. (By Mr. GUNNISON.) Mr. James, what is the width of the ground that you claim in this suit along the waterfront?

A. One hundred and thirteen feet.

Q. And that extends from where—the mark, or the point, from which that runs on the easterly, or down-channel side?

A. From the C. W. Young Company's wharf.

Q. And that runs this way, toward town?

A. One hundred and thirteen feet, yes.

Q. And you claim from the line of high tide to deep water.

Mr. BAYLESS.—Just a minute—

Mr. GUNNISON.—I will withdraw that.

Q. How far do you claim?

A. Out to deep water.

Mr. GUNNISON.—That is all.

Cross-examination.

(By Mr. BAYLESS.)

Q. Mr. James, how much of the property in dispute did you clear of rocks and driftwood in 1900?

A. Oh, we cleared a space there altogether about 200 feet—150—somewhere in there.

Q. What did you do in 1900 with reference to marking the boundaries of this tract?

Mr. GUNNISON.—We object to that question as being irrelevant, incompetent, and immaterial, and that the marking of the boundaries of tide lands is not necessary.

(Testimony of George E. James.)

The COURT.—It may be sometimes, though. Objection overruled.

A. Well, there was a very distinct boundary line by the rock piles on either side. [409—369]

Q. (By Mr. BAYLESS.) Let me understand you, Mr. James. Did you make any claim of ownership to this property prior to 1906? A. Yes.

Q. What was that claim of ownership?

A. Why, using it, occupying it.

Q. What did that claim consist of?

A. In usage.

Q. Your use consisted just in landing scows there from time to time? A. In 1906?

Q. No, prior to 1906.

A. In 1905 I had a structure on there.

Q. Well, you say in 1900 you claimed a space on this tide land of about 200 feet in width?

A. Approximately, yes.

Q. Beginning where and ending where?

A. Well, somewheres on the line between the C. W. Young property and the present place.

Q. Somewheres? A. Yes.

Q. Did you know where the C. W. Young company line was at that time? A. I did not.

Q. Mr. James, you don't claim any more than 113 feet now, do you? A. No, sir.

Q. Did you claim this 113 feet in 1900?

A. Yes, I think so.

Q. You think so?

A. Yes, and probably a little more.

Q. Why don't you now claim the extent of the ground cleared by you in 1900?

(Testimony of George E. James.)

Mr. GUNNISON.—We object to that as being incompetent, irrelevant, and immaterial. [410—370]

The COURT.—Objection overruled.

A. Why, I have got nothing on it—only the 113 feet.

Q. (By Mr. BAYLESS.) You are only claiming now the ground you have structures on?

A. Yes, sir.

Q. And when did you first put your first structure on? A. 1905.

Q. How much ground did you claim in 1905?

A. Well, practically what I have got now.

Q. Did you have any defined limits of your claim in 1905? A. What I had cleared.

Q. How much did you have cleared?

A. Well, approximately 200 feet.

Q. You have abandoned all of the 200 feet except the 113 feet? A. Yes, sir.

Q. How did that happen?

A. I didn't need any more than that.

Q. It wasn't valuable to you?

A. I had no use for it.

Q. How big was the structure you put on there in 1905?

A. Somewheres in the neighborhood of 20 by 40 or 50.

Q. So that in 1905 you actually used only a piece of ground 20 by 45 feet in extent?

A. No, I can't say I did—I used more than that, because I was landing scows and rafts all over that place with the exception of where that platform stood.

(Testimony of George E. James.)

Q. Well, how continuously was your use of that ground? A. In 1905?

Q. Yes, about the time you had the first structure there.

A. We used it practically all of the time.

Q. Practically all of the time? [411—371]

A. At least all of the time during the summer season.

Q. That is to say, you would be on the ground yourself and you would have lumber on the ground?

A. Well, I would be on the ground some of the time, yes.

Q. Some of the time? A. Yes, sir.

Q. And how did you use it all of the time?

A. By landing lumber, discharging scows, rafts.

Q. Did you have a raft or scow on this piece of beach all of the time?

A. Not all of the time; it would be brought to the sawmill and reloaded part of the time.

Q. Then there were periods when you didn't actually occupy or use this ground during the summer of 1905? A. There might be a day or so, yes.

Q. You only used it in the summer of 1905?

A. I used it some in the winter.

Q. What part of the winter?

A. Well, I don't remember the dates.

Q. Have you any clear recollection of how continuously you did use this ground in 1905?

A. I believe I said practically all of the time in unloading a load and reloading.

Q. Are there any special circumstances that would

(Testimony of George E. James.)

cause you to recollect whether or not you used this ground continuously in 1905?

A. I could tell you the exact dates by my books when the lumber was delivered and also in the winter-time.

Q. How often did you send over a scow during the summer of 1905?

A. It would probably take anywheres from one to three days to load it and it would take sometimes from three to six days to unload it—sometimes ten days, probably. [412—372]

Q. Then there would be a period of how long when there would be no scow on the beach?

A. It might be anywheres from one to three to five days before it would be loaded again—sometimes there would be a raft to go right on.

Q. Did you keep a man on the beach to look out for it for you?

A. Most of the time there would be a man to watch it.

Q. Most of the time you would have a man on the beach? A. Yes, sir.

Q. To watch the lumber?

A. Yes, especially in rough weather.

Q. Were you asked that question in the preliminary hearing?

A. If I had a watchman on the property?

Q. Yes. A. I believe I was.

Q. What did you answer?

A. I answered that I had no watchman on the property, I believe.

(Testimony of George E. James.)

Q. You want to change your mind?

A. You asked me if I had a man watching my lumber; I said I did at times when it was stormy.

Q. Did you have any regular agent on the ground to represent you? A. No, sir.

Q. Isn't this a fact, that prior to the time you put your gridiron there in 1906 that was a vacant piece of beach, was not occupied by any one with any structures, and that you merely came there and landed lumber from time to time as it served your purpose?

A. I believe the Perseverance had a platform on there before that.

Q. That isn't exactly what I meant. Prior to the time Mr. Davidson, as receiver for the Willson-Sylvester Estate, erected a platform on the piece of property that you now claim, was there any actual occupant who was there continuously? [413—373]

A. Before that time?

Q. Yes. A. I don't believe there was.

Q. There was no one who could be considered an actual occupant of that piece of tide land?

A. Outside of my using it, no.

Q. And your use was merely casual and intermittent?

A. Well, if you would call handling a million or a million and a half feet of lumber during the season over that, it would be casually. I handled fourteen hundred thousand feet over there in one year.

Q. Wasn't that about the time you had the Perseverance contract?

(Testimony of George E. James.)

A. I had no contract with the Perseverance until July 20, 1908.

Q. And you never furnished any lumber to the Perseverance Company prior to July, 1908?

A. Not unless it would be in the neighborhood of three thousand feet in May of that year.

Q. Well, prior to May, 1908, you had no business relations then with the Perseverance Company?

A. I had not.

Q. Furnished no lumber to them at all? A. No.

Q. How much lumber did you bring over in 1900?

A. Fourteen hundred thousand feet went into the Last Chance Basin.

Q. Fourteen hundred thousand?

A. One million, four hundred thousand feet.

Q. One million, four hundred thousand feet?

A. Yes, sir.

Q. You brought over that much lumber in 1900?

A. From Sheep Creek, yes, sir.

Q. You couldn't be wrong about that?

A. I am not, sir; I have figures to show that.

[414—374]

Q. Didn't you testify in your direct examination that you brought over seven thousand feet in 1900?

A. Impossible; couldn't have done that. It must have been a misprint.

Q. Did you testify in the preliminary hearing that you landed in the neighborhood of seven thousand feet?

A. I did not. I furnished all the lumber for those big flumes up there that year and I couldn't possibly

(Testimony of George E. James.)

have said seven thousand feet for all that work.

Q. I will ask you if you were asked this question and made the following reply: State to the Court what were the uses you put that beach to in 1900; answer: We used it for landing my rafts and scows, mostly rafts that year. I delivered in the neighborhood of seven thousand feet of lumber over that property.

Question: During what year? Answer: In 1900.

A. All but the seven thousand feet. That couldn't possibly be right. They couldn't build any flume with that.

Q. I will ask you if you testified that you delivered somewhere in the neighborhood of seven thousand feet of lumber in 1900?

A. I testified to delivering lumber, but I don't think I said seven thousand feet.

Q. You didn't give this testimony then?

A. I didn't give the testimony of seven thousand feet.

Q. You didn't say in your direct examination that you had landed fourteen thousand feet in 1900?

A. Fourteen hundred thousand feet—one million, four hundred thousand feet.

Q. Well, Mr. James, when did you start delivering lumber in 1900?

A. We started somewhere in May, I think; it might have been the latter part of May.

Q. Was this man Biernoth with you at that time?

A. Yes, sir. [415—375]

Q. Was he with you during the whole season of 1900? A. Yes, sir.

(Testimony of George E. James.)

Q. Well, you started delivering lumber over here on the beach in May, 1900? A. Yes, sir.

Q. How long did you continue delivering lumber?

A. I don't remember the date we quit, but we worked up till snow-fly that fall; it might have been in October, might have been in November—I don't remember the dates. It was late before we got through.

Q. How many scows did you land in 1900?

A. Not very many scows—pretty near all rafts.

Q. How many rafts?

A. It would be impossible to say.

Q. Do you know how many rafts you brought over?

A. Well, there was a good many, but just how many I don't remember; some very big ones and some very small ones, but we never aimed to come with less than forty or fifty thousand feet to the raft.

Q. How much space would such a raft occupy on the beach?

A. Anywheres from forty to eighty or ninety feet.

Q. Square? A. Well, it would be rather oblong.

Q. Did you beach those rafts? A. Yes, sir.

Q. How did you come in—on high tide?

A. Come in on high tide, get them up as high as we could and tie them up.

Q. What did you tie to?

A. Piles and rocks, wherever we could get a good fastening.

Q. That is, in 1900? A. Yes, sir.

(Testimony of George E. James.)

Q. What piles did you tie to? [416—376]

A. I don't remember; I think there was two piles on one corner we tied to and we had one stump on the upland on the other corner, that we used and we had some big rocks on the sides that we used to run a line out to.

Q. Where were these two piles situated with reference to the line of the Young wharf?

A. I have learned since they were right on the line of the Young property and my gridiron.

Q. You tied up to those two piles at that time?

A. Yes, sir.

Q. About how many times a week did you land rafts in 1900?

A. Well, there was from one to two rafts lying there all the time.

Q. Lying there all the time?

A. All the time. I have seen three in there at one time, because the teams couldn't take care of it as fast as we could bring it. It was all hauled to the Last Chance Basin.

Q. Where did they haul it from?

A. From that place to the Last Chance Basin.

Q. Where did you raft your lumber?

A. Sheep Creek.

Q. You were in the sawmill business at Sheep Creek at that time? A. Yes, sir.

Q. When did you start the sawmill in Douglas?

A. Fall of 1900.

Q. And you discontinued the Sheep Creek Mill?

A. Yes, sir; I believe I paid Rand for it the follow-

(Testimony of George E. James.)

ing year, because I had lumber in the yard there.

Q. What did you do in the winter of 1900?

A. We were working.

Q. With reference to this beach, did you land any rafts on that beach in 1900 in the winter?

A. No, I don't think I landed any rafts; I landed some scows that [417—377] winter to finish up some lumber.

Q. You didn't testify to that in the preliminary hearing that you landed no scows at all in 1900?

A. I don't remember whether I was asked that question or not.

Q. Well, how often did you land scows over there in the winter of 1900?

A. I don't remember how many times.

Q. Well, about what dates did you land them there?

A. It was a long time ago—it would be pretty hard to give you the dates.

Q. Why, it is only fourteen years?

A. That is all.

Q. Do you know whether you landed any scows at all in 1900? A. I do.

Q. Is there any peculiar way in which you can remember whether it was 1900 or some other year?

A. The only peculiar part of it is I had some unfinished work, but just what part of the winter I don't remember—it depends a great deal on the state of the weather in the winter-time.

Q. How much of the time in the winter of 1900 was that beach unused by you?

(Testimony of George E. James.)

A. Well, it was unused when I wouldn't use it.

Q. How much of the time did you not use that beach in the winter of 1900? A. I couldn't say.

Q. Did you use the beach more than just two or three times in the winter of 1900?

A. Probably not.

Q. Well, in 1901, what did you do with reference to landing rafts on their piece of beach?

A. I don't remember.

Q. Do you know whether you landed any rafts there or not? [418—378] A. I don't know.

Q. Do you know whether you brought over any rafts in 1901? A. In 1901 during the year?

Q. Yes. A. Yes.

Q. Well, how often did you bring them over?

A. Not very often in rafts in 1901, mostly scows; the only time I would bring a raft was when I was crowded for a scow.

Q. When did you start landing lumber over there in 1901?

A. I think we started the sawmill that spring in the latter part of April or the first part of May, and started delivering lumber as soon as we opened the mill. In fact, I think we delivered some before the mill opened that year.

Q. What time did the mill open?

A. Later part of April or first of May.

Q. And you immediately started to bring over lumber and land it on this beach? A. Yes, sir.

Q. When did you quit delivering lumber over here in 1901?

(Testimony of George E. James.)

A. At the end of the year, I guess.

Q. Up to Christmas?

A. Very close up to Christmas.

Q. Your recollection is right clear about that, Mr. James?

A. It might have been the latter part of November; might have been December.

Q. Do you depend upon your memory a great deal or have you any memoranda from which to refresh your memory?

A. I could tell exactly by looking over my books.

Q. Have you looked over your books to refresh your memory?

A. Not for during those first years, no, sir; later years I have.

Q. Well, what was the size of the scow which you brought over in 1901? [419—379]

A. I had two; one was either 16 by 44 or 14 by 44, I don't remember exactly, and I had another smaller one—that was probably 10 by 30, somewheres in there. I don't remember the exact size.

Q. Where, with reference to the present gridiron did you land those scows in 1901?

A. Well, sometimes right in front of it, and sometimes a little to one side, or a little to the other side. It all depended on the teams. If I had two in there we would fix it so we could load from either side or from the end.

Q. Did you have any particular spot where you landed these scows each time you brought them over?

A. Well, we tried to get them in the best place we

(Testimony of George E. James.)

could, on account of the beach, evenness and cleanliness of the beach, and the best place for the teams to pass around them up to them; that is what we were governed by.

Q. I believe you said in 1900 you cleared the beach of driftwood and debris? A. Yes, sir.

Q. How often did you clear that beach in 1901?

A. We done more or less clearing most every raft we brought in—would be crowded for room and sometimes would have three teams in there and we kept working on it off and on all summer—lots of big boulders on that beach.

Q. What did you do with the boulders?

A. Rolled them out of the road.

Q. Piled them up?

A. They were pretty well piled up at that time.

Q. Did you pile them up on the mounds?

A. No, they were too heavy to roll on top of each other.

Q. Are those there now?

A. The best chance we had to get rid of those boulders was on low [420—380] tide. We would get them on a steep place and they would roll off themselves.

Q. You rolled these boulders?

A. Yes, Charley and I rolled some pretty big boulders.

Q. How much of the time in 1900 did you spend pushing boulders around?

A. That would be pretty hard to say. We have worked there to midnight. We worked on tides prin-

(Testimony of George E. James.)

cipally and might have got in a good many extra hours overtime.

Q. You rolled these boulders out and dropped them off in deep water?

A. All we possibly could, yes, sir.

Q. So those boulders you rolled out there in 1900 don't appear on the ground now?

A. They were rolled off so they wouldn't bother us any more.

Q. You testified that in 1900 there were a couple of piles there on the line of the Young wharf property and the Pacific Coast Company's property; did you know at that time whom those piles belonged to?

A. I did not.

Q. Did you know at the time you went on there whose property you were encroaching on or occupying? A. In 1900?

Q. Yes.

A. Why, I hardly think I did, who it belonged to in 1900.

Q. What were your intentions in 1900 with reference to occupying it or using this piece of beach?

A. My intentions were very good, because I used it pretty much that year.

Q. Did you know that that beach belonged to any one?

A. I thought the beach belonged as much to me as anybody; I was using it. [421—381]

Q. Did you know who owned the upland?

A. I did not.

Q. Well, did you intend to go in there and appro-

(Testimony of George E. James.)

priate that piece of tide lands to your own use?

Mr. GUNNISON.—We object to that as irrelevant, incompetent, and immaterial.

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception.

Q. (By Mr. BAYLESS.) In 1900?

A. Well, I certainly intended to use it as long as I had any business and was using it at that time.

Q. Did you intend to hold it against all comers in 1900?

A. I don't think I didn't know whether anyone did claim it outside of me; didn't know anything about it.

Q. When you landed lumber over here in 1900, didn't you just use that because it was a convenient piece of beach, without having any intention of claiming it as your own property?

A. Why, I cleared it and was using it and intended to keep it and use it.

Q. And clear it and hold it against all the world?

A. Well, I suppose so.

Q. Did you make your claim known to anybody?

A. Why, I was there all the time and everybody seen me there.

Q. You were there all the time in 1900?

A. I lived in Juneau and worked there and was there almost daily.

Q. Three hundred and sixty-five days in 1900?

A. Oh, not absolutely that many days; might have skipped two or three; might have skipped four or five, and might have been there four or five times in one day.

(Testimony of George E. James.)

Q. You didn't go there until May? A. No.
[422—382]

Q. And you quit along about October?

A. Might have been November; I don't remember exactly.

Q. You don't know when you did quit, do you?

A. Either one of those two months.

Q. Now, you want the Court to understand that between May and November you were on that ground every day and that everybody could see you on the ground?

A. Sometimes three times a day and sometimes I would be there a half day without being off the ground, and sometimes I wouldn't be on the ground for two or three days.

Q. But you didn't know that the uplands belonged to the Pacific Coast Company and the tide lands as well?

A. No, I didn't pay any attention to the uplands; I didn't use the uplands.

Q. You didn't know to whom it belonged?

A. I didn't know to whom it belonged to.

Q. When did you become aware that this piece of property was claimed by the Pacific Coast Company? A. In 1913.

Q. So from 1900 to 1913 you used this property from time to time, but didn't know that the Pacific Coast Company claimed to be the owner of it; is that a fact?

A. I might have surmised that they claimed it, but

(Testimony of George E. James.)

no one ever notified me that they did claim it.

Q. I am asking you if you know?

A. No one notified me that they owned it.

Q. Did you know that the Pacific Coast Company claimed to be the owner of that property?

A. Of the upland?

Q. And tide lands as well?

A. Yes, I think I did before. I think I knew, or at least it was [423—383] said they claimed it.

Mr. GUNNISON.—Q. Claimed which?

A. The uplands and that tide land.

Q. (By Mr. BAYLESS.) When did you find out that they claimed the tide lands? A. 1913.

Q. You didn't know before that time that the Pacific Coast Company claimed to be the owners of these tide lands? A. They didn't tell me so.

Q. Well, I am asking you, Mr. James, whether you knew they claimed to be the owners of it?

A. I knew they claimed the Murray and Carroll wharf site.

Q. Did you know how big that wharf site was?

Mr. GUNNISON.—I submit that he ought to allow the witness to finish answering it.

The COURT.—I understood that the witness answered it. Do you want to answer any more?

A. No.

Q. (By Mr. BAYLESS.) Do you know how big the Carroll wharf site was?

A. I know how big the wharf was, but not the wharf site.

Q. Did you know the boundaries of the Carroll-

(Testimony of George E. James.)

Murray wharf site? A. I did not.

Q. When did you first become aware of the fact that the Pacific Coast Company claimed to be the owner of the tide lands you now claim?

A. In 1913.

Q. You knew of no claim of ownership prior to that time?

A. No, I was under the impression they had abandoned the whole tract for a wharf site.

Q. The whole tract—did you ever hear of the McCloskey case?

Mr. GUNNISON.—We object to that as being immaterial.

The COURT.—I didn't hear the question.
[424—384]

(Q. read by stenographer.) The whole tract—did you ever hear of the McCloskey case?

The COURT.—That question may be preliminary, of course. It isn't any more relative than lots of other questions if left by itself, but I imagine it is merely preliminary.

Mr. GUNNISON.—We submit that the McCloskey case was a case that involved none of this tide land at all.

The COURT.—I don't know anything about that, Judge Gunnison.

Mr. GUNNISON.—I do.

The COURT.—All right—the Court is not supposed to know anything about it so far as this question is concerned. Objection overruled.

Mr. GUNNISON.—We think it is immaterial

(Testimony of George E. James.)

whether he did or did not.

The COURT.—There is certainly no objection to that question.

Mr. GUNNISON.—Exception.

A. Yes.

Q. (By Mr. BAYLESS.) You know that McCloskey tried to jump a piece of the company's waterfront?

Mr. GUNNISON.—We object to that as irrelevant, incompetent and immaterial, until it is shown that it is this piece of waterfront in controversy.

Q. (By Mr. BAYLESS.) A piece of the Carroll-Murray wharf site?

Mr. GUNNISON.—Same objection.

Mr. BAYLESS.—Mr. James stated that he was under the impression that the Pacific Coast Company had abandoned the waterfront, the Carroll-Murray wharf site tide lands; that is the impression I got from his answer.

The COURT.—Objection sustained.

Q. (By Mr. BAYLESS.) You know that McCloskey started to drive some [425—385] piles on a portion of the Carroll-Murray wharf site tide lands, don't you?

Mr. GUNNISON.—Same objection.

The COURT.—Objection sustained.

Mr. BAYLESS.—Well, now, if the Court please, my position is this: We are entitled to show acts of ownership over the whole Carroll-Murray wharf site, including this piece of property for this reason: At the time the wharf site was located it was a piece

(Testimony of George E. James.)

of uplands and tide lands 600 feet square and a wharf was put on there in the middle of it and for a number of years it was actually used in toto. After the wharf was abandoned as a wharf and the vessels landed over on this wharf, the wharf buildings and improvements on this whole piece of property were used and occupied and had been occupied and used down to date, and there was nothing to distinguish the piece of tide lands now claimed by Mr. James from any other portion of the Carroll-Murray wharf site, and it was treated as one block of land by the company at all times, and if we are prevented from proving acts of ownership as to other portions of this tract, we will be precluded from getting in some points that are essential in this case, and I desire to show what we have been doing with the whole tract, because I take this position, in addition to that, that if we had been in actual possession of a portion of this piece of property at all times and the whole piece of property has been marked and bounded on the ground, and there are monuments to show that, and we claim the whole piece of waterfront, that we don't have to be in possession of every inch of that property in order to be considered in possession of the whole thing.

The COURT.—Do you expect to prove that by the cross-examination of the defendant's witness?
[426—386]

Mr. BAYLESS.—No, but Mr. James said he was under the impression that we had abandoned the tide land.

(Testimony of George E. James.)

The COURT.—That he was under the impression—now, then, you can cross-examine to show that he wasn't under that impression, but you cannot cross-examine about anything Jim McCloskey did or anybody else did.

Mr. BAYLESS.—Here is the rule—

The COURT.—No, Mr. Bayless, I am satisfied you are wrong about it. The objection will be sustained.

Mr. BAYLESS.—Your Honor will allow me an exception to that?

The COURT.—Certainly.

Q. (By Mr. BAYLESS.) Mr. James, did you know how much tide land was included in the Carroll-Murray wharf site?

A. No, not until this case started.

Q. Do you know Mr. Charles E. Davidson?

A. Yes, sir.

Q. Did you know him in 1905? A. Yes, sir.

Q. He was living here in 1905?

A. Part of the time, yes.

Q. He was receiver of the Willson-Sylvester Estate? A. At Wrangell, yes, sir.

Q. And that estate of the Wrangell sawmill had a contract to furnish lumber and mill timbers for the Perseverance Mining Company; do you know that?

A. That would be hearsay if I would tell you that.

Q. Well, did you know that in 1905 there was that arrangement?

A. I think there was that kind of an arrangement, but I had nothing to do with the business, so I

(Testimony of George E. James.)

couldn't tell you whether it was the Perseverance or somebody else; I don't know. I suppose it was the Jashua-Hendy people that had the contract, but I am not sure. [427—387]

Q. Your recollection is that it was the Joshua-Hendy people that bought it from the Wrangell sawmill?

A. That bought it from the Wrangell sawmill, yes, sir.

Q. It was delivered on the beach you now claim?

A. Yes, sir.

Q. To the Perseverance Company?

A. They told me that the Perseverance had the contract, or at least that is what they told me. I tried to get part of it, but they told me that Joshua-Hendy had a contract and had already made arrangements to get their lumber at Wrangell, so it couldn't be for the Perseverance.

Q. Couldn't be for the Perseverance?

A. Might be for the construction of their buildings.

Q. That is here for the Perseverance mill?

A. Yes, sir.

Q. Do you know what arrangement Mr. Davidson had with the Pacific Coast Company?

A. I have heard it here, yes, sir.

Q. Did you know in 1905 what that was?

A. I did not.

Q. Were you aware that the Pacific Coast Company leased that property which you now claim to Mr. Davidson as receiver?

(Testimony of George E. James.)

A. Davidson said, I believe, they had leased it at that time.

Q. He told you they had leased it?

A. Yes, sir.

Q. From the Pacific Coast Company?

A. He didn't say who it was from; he said he had a lease on it.

Q. You didn't know from whom he had leased in 1905? A. No, I didn't ask him.

Q. How did he come to tell you he had leased it?

A. I told him he could move over and give me a little more room and he said he had a lease on that.

[428—388]

Q. And you mean you didn't ask him who the lessor was? A. No, I did not.

Q. And that was all the conversation you had with Mr. Davidson?

A. About that particular thing, I believe, yes, sir.

Q. Do you know whether Davidson built any structure on that piece of tide land?

A. Yes, he put up a platform on that.

Q. Do you know whether he used that platform?

A. Yes, sir.

Q. Do you know how often it was used?

A. I think he used it five, for five or six scow-loads of lumber that summer.

Q. And that was all? A. Yes, sir.

Q. Did you make any objection to his using that?

A. I made objection to him crowding me there, that is all.

Q. And he was occupying a portion of the beach

(Testimony of George E. James.)

which you say you once claimed? A. Yes, sir.

Q. And you didn't do anything more than just merely object to it, and Davidson then told you he wouldn't move because he had a lease?

A. Yes, sir.

Q. Didn't he tell you he had a lease from the Pacific Coast Company?

A. Not to my knowledge he didn't.

Q. Well, were you aware at that time that the Pacific Coast Company claimed these tide lands?

A. I don't remember whether I was or not.

Q. Are you quite sure, Mr. James, that you didn't know of any claim by the Pacific Coast Company of ownership in these tide lands until just before this suit was brought? [429—389]

A. For an absolutely certainty I didn't, but I heard they owned it and claimed it.

Q. And you didn't know in 1905 from whom Davidson had leased?

A. I don't know whether I did or not.

Q. Well, did you claim the piece of ground that Davidson occupied in 1905 at that time?

A. I claimed that as part of the ground I had cleared and he was getting in my road and I told him he might have moved over farther to give us more room, and, if I am not mistaken, he told me that he had to get it done and then he would move over farther, and so I says I wouldn't want to obstruct any development of the company.

Q. But you laid claim at that time to the piece of ground which Davidson built on? A. Yes, sir.

(Testimony of George E. James.)

Q. And you didn't put him off? A. I did not.

Q. You didn't order him off? Did you have any idea how long he was going to stay on that ground?

A. I think he told me he had in the neighborhood of six hundred and fifty or seven hundred thousand feet of lumber to deliver to the Joshua-Hendy people and the scow carried from a hundred and twenty to a hundred and twenty-five thousand feet, so it wouldn't take very long, but it took longer than they expected, about three or four months.

Q. Did you know how long that lease was given for? A. No, I didn't ask him.

Q. Mr. Davidson used that platform all the summer of 1905, didn't he? A. All the summer, yes.

Q. And you landed some lumber on that platform, didn't you? A. Not to my knowledge, I didn't.

Q. Didn't use it at all? [430—390]

A. I don't think I did, in fact I know I didn't.

Q. You are quite sure that you never used that platform for any purpose?

A. If I did use it, it might have been to throw a few pieces off my scow on it, but I don't recollect that.

Q. Well, do you know whether or not you did use it at any time?

A. It would be pretty hard to say.

Q. Didn't you answer in reply to a question from your attorneys that you had never used that platform of Davidson's?

A. I don't remember; I might accidentally have thrown a piece of lumber.

(Testimony of George E. James.)

Q. Your recollection is that you never used that platform?

A. That is the best of my recollection, yes, sir.

Q. Have you any recollection of testifying any differently in your preliminary hearing in this case?

A. As to my using the platform?

Q. Yes. A. I have not.

Q. I will ask you if you were asked this question and made the following reply: While they were not using it, who did use it? Answer: I used it once to unload a little boat of lumber. Question: Did you get permission to do that? Answer: No, I didn't ask permission. A. Well, I might have said that.

Q. As a matter of fact, Mr. James, your recollection isn't very clear about all these little details?

A. Yes, it is pretty clear.

Q. Are you prepared to swear positively about all these little matters that have transpired so long ago?

A. Some of them are very clear to me, because I had more or less to do with it myself. [431—391]

Q. How often did you use this platform of Davidson's?

A. Well, not very much. If I threw any lumber off the scow, it might be part of a load and I might have wanted the scow in a hurry and I might have lifted to this platform—it was quite possible to lift from the scow to the platform. It was built so it would stand out of the highest water and it was quite possible to lift it from the scow. I might have thrown a few pieces off the scow onto it.

(Testimony of George E. James.)

Q. What was Davidson doing while you were using the platform?

A. He was probably down at Wrangell sawing lumber.

Q. You do not know what he did? A. No, sir.

Q. Well, when this Wrangell lumber was landed on the beach it was landed on the ground you now claim, was it?

A. Landed on that platform, yes, sir.

Q. And it was landed in from Gastineau Channel right over the tide lands you now claim; is that a fact?

A. The scow was landed right alongside that platform and unloaded, yes, sir.

Q. How much of the tide lands which you now claim were actually occupied by Davidson in the summer of 1905?

A. I don't recollect the size of that platform, but it must have been 40 feet by 24 feet. That was the structure, to the best of my recollection. It might not have been that large and there might have been another bent in it, but I don't remember.

Q. What I am getting at is this: In order to get to this platform which was near high-tide mark, or at or near high-tide mark, the scow had to come over the ground from the channel and came over the present site of your gridiron, didn't it?

A. Yes, sir.

Q. It was brought right over the ground where you afterwards built your gridirons? [432—392]

A. Yes, she floated in to the platform.

(Testimony of George E. James.)

Q. How much ground did Davidson occupy in addition to this platform in the summer of 1905?

A. Well, what space the wagon took up and the space in the water that the scow took up. He always tried to unload on high tide, because the scow was too frail.

Q. Well, how much of this 113 feet which you now claim did Davidson occupy in 1905?

A. Somewheres in the neighborhood of 40 by 24 feet with his platform.

Q. That is all he did occupy?

A. To my knowledge, yes, sir.

Q. Do you know whether he had any lumber piled on the beach?

A. It was all on the beach; it fell down; it was all on the beach at one time.

Q. How much of this 113 feet did the lumber cover?

A. Scattered over, I couldn't tell you.

Q. Most all of it?

A. Yes, more than that. I guess some of it went clear up town. They lost considerable of it.

Q. Did you ever interfere with Davidson's occupation of the ground you now claim?

A. I told him he was crowding me—that was all in a friendly way.

Q. In just a friendly way? A. Yes.

Q. You didn't go at him like the owner of a piece of tide lands usually goes after a trespasser, did you?

Mr. GUNNISON.—We object to that on the ground that it is irrelevant, incompetent and imma-

(Testimony of George E. James.)

terial and argumentative.

The COURT.—Objection sustained.

Q. (By Mr. BAYLESS.) Well, you didn't threaten to eject him if he didn't move, did you, Mr. James? A. I did not. [433—393]

Q. Do you know whether or not the Perseverance Company hauled any lumber over across the lands you now claim in 1906 and 1907? A. Yes, sir.

Q. They got that lumber from where?

A. From the Jorgenson sawmill, but still that road went right up to the edge of it. I don't think they ever came down past the present road. I think the wagon-road was right close up there.

Q. Are you sure the wagon-road wasn't on the beach?

A. It was on the beach at high-water mark. I wasn't up that high.

Q. Didn't you claim the beach up to the high-water mark?

A. Yes, sir; I made myself a road in there.

Q. And your wagon-road was close to high-water mark? A. Yes, sir.

Q. On part of the land you now claim?

A. No, that is where the street stands now—the piece you sold to the city for a street, that is where the wagon-road was.

Q. Well, the Perseverance wagons hauled lumber from the Jorgenson sawmill in 1906 and 1907 over the property that you now claim, didn't they?

A. I don't think they got down past the plank street. I don't know what year that was sold in. I

(Testimony of George E. James.)

think it was already sold for a street at that time and that is where the wagon-road was built.

Q. You haven't any actual knowledge whether the company sold the street off of that piece of property to the city or not, have you?

A. I know they dedicated it or sold a piece of the waterfront to the city.

Q. When did you know that?

A. I think when they built the street in 1906 or 1907. I think it was 1906.

Q. Did you know how much the company was dedicating to the city?

A. Why, I heard it was either twenty or forty feet, twenty feet.

Q. You heard it was? [434—394] A. Yes.

Q. Was any portion of the land dedicated a portion of the property which you had claimed?

A. Yes, sir.

Q. Was the street built on this property so dedicated? A. Of the strip you mean?

Q. Yes. A. Yes.

Q. Was it built on the property which you had claimed? A. A part of it, yes, sir.

Q. Did you do any dedicating yourself.

A. I did not.

Q. Did you make any objection to the city putting a street in there?

A. No, I believe I helped them.

Q. You didn't make any objection to the Pacific Coast Company dedicating a piece of property which you claimed, did you?

(Testimony of George E. James.)

A. No, I was glad to see the street go in there however they got it.

Q. Did you notify the city that the piece of property which the street was going over was claimed by you? A. I did not.

Q. Mr. James, have you ever paid any taxes on this piece of property?

Mr. GUNNISON.—We object to that as irrelevant, incompetent, immaterial and not proper cross-examination.

The COURT.—Objection overruled.

A. I have not.

Q. Have you always openly, notoriously and adversely claimed this piece of property prior to the institution of this suit?

Mr. GUNNISON.—Object to that as calling for a conclusion of the witness.

The COURT.—Yes, I think so, Mr. Bayless. What is openly, notoriously, adversely? It is a question of law and depends upon the facts and circumstances. Ask him as to facts [435—395] and not conclusions.

Q. (By Mr. BAYLESS.) Well, Mr. James, have you ever made a public claim of ownership to this piece of property?

Mr. GUNNISON.—We object to that question as calling for a conclusion of the witness—I don't know whether he means he hired a hall and made a speech about it or what.

The COURT.—Yes, I think so, Mr. Bayless.

Q. (By Mr. BAYLESS.) Mr. James, you say

(Testimony of George E. James.)

you have made a claim of ownership to this piece of property; is that a fact? A. Yes, sir.

Q. When did you first make your claim of ownership?

A. When I began to clear it and use it.

Q. To whom did you make that claim?

A. I don't know as I went out and cried it on the street corners or anything of that kind. I started in to use it, clear it off, and prepare it and improve it.

Q. Did you tell anybody that you were going to claim it?

A. I don't remember whether I did or not; I might.

Q. Did you file any location notice?

Mr. GUNNISON.—We object to that as irrelevant, incompetent and immaterial.

The COURT.—Objection overruled.

A. No.

Mr. GUNNISON.—Wait a minute—

The COURT.—Had you finished your objection?

Mr. GUNNISON.—No, sir, and further that the claim to tide land isn't necessarily established by the filing of a notice. That isn't the basis of the use of tide lands.

The COURT.—That may all be true, but he may show all the facts and circumstances which have any bearing. Objection overruled. [436—396]

Mr. GUNNISON.—Do I understand your Honor to hold that the filing of a location notice is necessary in the occupancy of tide lands, or that it is merely indication of intention?

(Testimony of George E. James.)

The COURT.—I didn't say anything that would lead you to believe that it was necessary. I don't make any holding—I simply say it sometimes might have weight and sometimes might not.

Q. (By Mr. BAYLESS.) You didn't file any location notice, did you, Mr. James? A. No.

Q. Did you tell anybody in 1900 that you were going to claim that piece of beach?

A. I don't remember.

Q. Did you tell anybody in 1901?

A. I don't remember.

Q. Do you remember whether you ever told any one? A. Yes, sir.

Q. When did you first make known your claim of ownership there? A. I don't remember.

Q. Well, was it prior to the commencement of this action? A. Yes, sir.

Q. How much prior?

A. Might have been six, seven, or eight years; might have been ten years.

Q. In 1903? A. Might have been.

Q. Well, now, I am not asking you whether it might be—I would like to know if you can state when you first made your claim to this property?

Mr. GUNNISON.—We object to that as calling for a conclusion of the witness—if he means when he first said anything to anybody—

The COURT.—Do you mean a verbal claim?
[437—397]

Mr. BAYLESS.—Yes.

(Testimony of George E. James.)

The COURT.—Very well—Change the question to that extent.

Q. (By Mr. BAYLESS.) When did you first make a verbal claim to be the owner of this property?

A. I don't remember the date.

Q. Well, to whom did you make that claim?

A. To Nick Uren.

Q. He is no longer in these parts, is he?

A. No, he isn't here now.

Q. He was a business associate of yours, was he?

A. No, sir.

Q. He was engaged in business on this side?

A. Yes, sir.

Q. And you did business with him frequently?

A. I don't remember of doing much business with Nick on this side. He did some before he moved from Douglas.

Q. You told him this in a private conversation, did you?

A. Well, we didn't call in anyone to hear it that I remember.

Q. Do you know about what time that was—what date it was?

A. The only way I have of fixing the time would be the first year he moved over here.

Q. When was that?

A. He was a lessee from the Pacific Coast Company at that time.

Q. Well, was anybody present when you told him this?

A. I don't remember. I was talking to Nick Uren.

(Testimony of George E. James.)

Q. Did you tell anybody else that you claimed to be the owner of this property? A. I have.

Q. Do you remember of your telling anybody else that you were the owner? A. Yes, sir. [438—398]

Q. Who did you tell?

A. I told Mr. B. M. Behrends.

Q. Mr. Behrends is a partner of yours in the saw-mill over at Douglas? A. He is, yes, sir.

Q. That was also told to him in a private conversation?

A. I don't know whether it was a private conversation or not.

Q. Well, did you walk in his office in the bank when there was a lot of people there and announce in a loud tone of voice that you were the owner of this particular piece of property?

A. I told Mr. Behrends that I was claiming it.

Q. You told him? A. Yes, sir.

Q. You were in his private office in the bank, which is almost sound proof, is it not?

A. It might have been on the street, I don't remember now.

Q. Well, you were careful about telling him that?

A. No, I don't usually whisper.

Q. You weren't making any public news of your intentions, were you, Mr. James?

Mr. GUNNISON.—Object to that as argumentative.

The COURT.—Yes, I think so.

(Testimony of George E. James.)

Q. (By Mr. BAYLESS.) Nick Uren didn't come over here until 1908 or 1909, did he?

A. I don't remember when he moved over.

Q. It might have been 1910?

A. I don't remember.

Q. Well, it was a long time after you had built your gridiron down there, wasn't it?

A. Couldn't be so very long. I remember of getting some drift bolts from him on this side for some of that, but whether that was for the approach or repairs I don't remember.

Q. Well, did you tell anybody besides Uren and Behrends? [439—399]

A. Oh, I don't remember; I have told several people about it.

Q. Didn't you tell your bookkeeper?

A. Well, he would be working for me.

Q. You told your bookkeeper, didn't you?

A. Yes, sir.

Q. You and he had a little secret talk?

A. Yes, sir,—in the back room.

Q. Did you tell any agents or officers of the Pacific Coast Company that you were going to claim this property? A. None of them ever asked me.

Q. You were very friendly with Mr. Swan in particular, weren't you? A. Yes, sir.

Q. You did considerable business with the Pacific Coast Company, didn't you?

A. I am doing that yet.

Q. And while Mr. Swan was agent here for the company you and he were good friends, weren't you?

(Testimony of George E. James.)

Mr. GUNNISON.—We object to that as irrelevant, incompetent, and immaterial—whether he was friendly or not.

Mr. BAYLESS.—It is more or less preliminary.

Mr. GUNNISON.—We admit that he was friendly, to save time.

The COURT.—Very well.

Q. (By Mr. BAYLESS.) You saw Mr. Swan very frequently while he was agent here?

A. Yes, I have seen Mr. Swan lots of times.

Q. You have talked with him about a great many subjects, haven't you? A. About what?

Q. About business and other things?

A. Yes, I talked to him about coal, sometimes a few freight claims that I used to try to get him to settle.

Q. But you never said a word about your having any adverse claim [440—400] to this piece of property on the beach? A. To Swan?

Q. Yes. A. Swan never asked me.

Q. And you never told him. You just sat tight and said nothing; is that right?

Mr. GUNNISON.—We object to that as being argumentative.

The COURT.—He has answered the question. It seems to me, Mr. Bayless, it is just a waste of time in repeating it. You ask it in a light-hearted tone after you have got an answer to the question. An objection to any further questions about whether he said anything to Mr. Swan will be sustained.

Q. (By Mr. BAYLESS.) I want to ask Mr.

(Testimony of George E. James.)

James this question: As far as Mr. Swan, or any of the other agents of the Pacific Coast Company was concerned your claim of adverse possession was secret; is that a fact?

Mr. GUNNISON.—That is objected to as being argumentative, calling for a conclusion, and has already been answered in the main.

The COURT.—Objection sustained.

Q. (By Mr. BAYLESS.) Mr. James, have you any paper title?

Mr. GUNNISON.—Object to that as irrelevant, incompetent, and immaterial.

A. I don't understand what you mean by paper title.

Mr. GUNNISON.—Wait a minute—Did the Court rule on the objection?

The COURT.—What is the objection?

Mr. GUNNISON.—There isn't any claim to paper title.

The COURT.—Objection overruled. Explain to him what you mean by paper title.

Q. (By Mr. BAYLESS.) You don't claim to own this by virtue of having filed any location notice?
[441—401] A. No, sir.

Q. Or having the property conveyed to you by any deed? A. No, sir.

Q. Or of holding under any lease? A. No, sir.

Q. In other words, you have no paper title to support your claim?

A. No paper title, if that is what it is called.

Q. And your claim is based merely upon occupation and is not by any color of title?

(Testimony of George E. James.)

Mr. GUNNISON.—We object to that as calling for a conclusion.

The COURT.—Objection sustained.

Q. (By Mr. BAYLESS.) Your claim is based merely upon possession, use and occupation?

A. Yes, sir.

Q. Mr. James, under what theory do you hope to win this case?

Mr. GUNNISON.—We object to that question on the ground that it is irrelevant, incompetent, immaterial, and as calling for a conclusion of the witness.

The COURT.—Objection sustained.

Q. (By Mr. BAYLESS.) Mr. James, when did you build the first approach to the gridiron?

A. 1907, in the spring of 1907.

Q. How much of the 113 feet which you claim did this approach occupy? A. I don't know.

Q. Would you say it occupied approximately fifty feet? A. In length?

Q. Yes.

A. I don't know; I couldn't say exactly.

Q. Prior to the time you built the westerly approach, the approach toward town from the gridiron, there was no structure on this beach? [442—402] A. On the part that the approach is on?

Q. Yes. A. No, sir.

Q. There was no structure at all on that piece of tide land which you now claim?

A. Prior to that, no, sir.

Q. The only structure that you had erected there was your gridiron in 1906?

(Testimony of George E. James.)

A. That gridiron and the platform on the inside of the gridiron.

Q. The platform erected by Davidson?

A. No, sir, Davidson's was erected in 1905.

Q. Where was this other platform?

A. Right in here to pile lumber on (indicating).

Q. When did you put that platform on?

A. When this was built.

Mr. GUNNISON.—Q. What do you mean by "this"? A. Gridiron.

Q. (By Mr. BAYLESS.) Is that platform there now? A. Not the same one.

Q. Well, how wide was that platform?

A. Oh, it might have been 50 feet by 24.

Q. By 24 feet wide and 50 feet long?

A. Yes, calling the length this way. (Indicating.)

Mr. GUNNISON.—Q. Parallel to the beach?

A. Yes.

Q. (By Mr. BAYLESS.) How wide is the present platform?

A. Twelve feet.

Q. What happened to the other platform?

A. It went out. After I put in this roadway there was just a few bents. I used it for awhile, but it was too hard to use it, so we discontinued using it.

[443—403]

Q. When did you build that platform twelve feet wide? A. 1907.

Q. At the same time that you built the approach. When did you build the approach to the easterly over Young's property?

(Testimony of George E. James.)

A. In the spring of 1912, I think.

Q. So prior to 1912 there was nothing on a portion of the ground you now claim, on the easterly portion?

A. This platform here extended clear out here. This gridiron is under here and when a scow overhangs she hangs up against these piles. I have a line here to tie to from the dividing line of the C. W. Young property and my gridiron. (Witness indicating.)

Q. When did you drive that row of piles?

A. I don't remember the year.

Q. How long prior to the time you built the gridiron?

A. I think it was in 1906 that I drove those piles. It might have been earlier than that, I don't remember. Mr. Webster was in there driving piles for someone else and they came over and drove those for me, but I think it was 1906.

Q. Did you ever have piles driven in the westerly boundary line of your property?

A. Only the piles that supports this here. (Indicating.) There are three piles up in there that were set.

Mr. GUNNISON.—Q. What do you mean by “in there”?

A. On this approach on the inshore side and upper corner.

Q. Of which approach?

A. Westerly approach; in the year 1907.

Q. (By Mr. BAYLESS.) Did you ever drive a

(Testimony of George E. James.)

row of piles on the westerly boundary line of your property as claimed by you now? A. I did.

Q. When? A. In 1913.

Q. And you were enjoined from driving any more piles on this boundary line? [444—404]

A. Yes, sir.

Q. And that was the occasion for this suit; is that a fact? A. I believe it was.

Q. You commenced—

A. I commenced construction of this gridiron in here that I propose to build and this platform here, this driveway here connecting with this driveway. (Indicating.)

Q. Prior to that time was there anything to the west of your present gridiron except the approach to the street? A. No, sir.

Q. There was nothing on the ground which you have been enjoined from building on? A. No, sir.

Q. Prior to that time? A. No.

Q. Mr. James, in 1901, 1902, and 1903, or thereabouts, did you know that the Pacific Coast Company was in some litigation with certain Indians and other people over the lots and blocks of the uplands upon which the beach which you claim abutted on?

A. They didn't tell me anything about it. I might have heard it from other people.

Q. You didn't know that the Indians were disputing our right?

A. Not from my own knowledge, only from hearsay; where it was or how it was—I knew nothing about it.

(Testimony of George E. James.)

Q. You knew nothing about this litigation over the uplands? A. I did not.

Q. Abutting on your claimed tide lands—knew nothing of that? A. I did not—only hearsay.

Q. Hearsay at that time?

A. I don't remember when the time was. It might have been afterwards; might have been at the time.

Q. You didn't know that the Pacific Coast Company was laying claim [445—405] to the uplands in 1903?

A. I didn't have anything to do with the uplands.

Q. You didn't know that the tide lands were in controversy? A. I did not.

Q. Knew nothing of that?

A. I had no controversy with them, I know that.

Q. Wasn't it a matter of common knowledge here at that time that the Pacific Coast Company owned all the uplands in R, S and T, including the tide lands?

Mr. GUNNISON.—We object to that as irrelevant, incompetent, and immaterial, and as calling for a conclusion of the witness.

The COURT.—Objection sustained.

Mr. BAYLESS.—I think that is all.

Redirect Examination.

(By Mr. GUNNISON.)

Q. Mr. James, how much of those tide lands did you use in the year 1905, the land in controversy, in landing your scows and delivering lumber over that beach?

A. I used more in 1905 than in any other year.

(Testimony of George E. James.)

Q. Now, describe to the Court how you used it.

A. This platform practically stood in the center of the tract that I had cleared and I had to get around on whatever side I could in order to make a landing and discharge lumber.

Q. Did you land on various places or only in one place?

A. I landed in various places other than besides where I used my little gridiron.

Q. Now, with reference to that testimony on the preliminary hearing that counsel read to you, in which you are quoted in the testimony [446—406] as having delivered or landed only seven thousand feet of lumber in the year 1900; what do you say as to whether or not that is correct?

A. Seven thousand feet?

Q. Yes, sir.

A. There was over a hundred and twenty thousand feet in riffle blocks alone. There was one flume that was eighteen hundred feet and that was four by four, built out of two-inch plank, and all stringers; and another one twenty-eight hundred feet in length; that was a 4 by 5 flume; and there was another flume that was over two thousand feet long—that was 2 by 3, built out of two-inch planks and was covered all over. I had the contract and furnished the lumber and built them in that year.

Q. And were they furnished over this portion—over this ground? A. Yes, sir.

Q. You say a raft would occupy from forty—forty by eighty or ninety feet; how do you mean it would occupy a tract? A. Occupy?

(Testimony of George E. James.)

Q. When it was on the beach?

A. When it was settled on the beach or in the water it took up that space.

Q. How much space was necessary to land a raft of that kind? A. Oh, a couple hundred feet.

Q. In ordinary weather?

A. A couple hundred feet in ordinary weather, yes, sir.

Q. Counsel inquired of you if you intended to keep the ground and claim it; when did you first intend to do that—when was it you intended to make that claim to this ground in controversy?

The COURT.—Intended to claim it?

Mr. GUNNISON.—That is what counsel asked him, if I remember right—if he intended to use it when he went on the ground. [447—407]

Q. (By Mr. GUNNISON.) Well, what do you say with reference to the purpose which you had in mind when you went on that ground in 1900?

Mr. BAYLESS.—Object to that as immaterial.

The COURT.—Objection overruled.

A. Why, to prepare it, use it as a place of landing, occupy it.

Q. (By Mr. GUNNISON.) What do you say about that with reference to other people, the use of it by other people—use of it by others? That is, your use of it with reference to using it by other people? Did you intend that it was to be yours, or were you making an occasional use of it?

A. That it was to be mine to have it and use it.

Q. What do you say as to the character of your use

(Testimony of George E. James.)

and occupancy of that ground; that is, as to whether it has been secret, or whether it has been open and that you have used it at all times of day over this period of time?

A. I have been on there day and night.

Q. To whom has lumber been delivered that has been landed there?

The COURT.—That has all been gone over, Judge Gunnison.

Mr. GUNNISON.—Well, I guess it has.

Q. (By Mr. GUNNISON.) Now, you testified something about trying to get part of the Perseverance contract; please state what there was with reference to that in 1905.

A. I tried to get the contract with the Perseverance people to furnish the lumber for their mill up there, but was told that the Joshua-Hendy people had the contract and they were doing the buying and I went to the foreman, Mr. White. They had a man before he came here and I even tried to get it through him, but he said it was already bought and contracted with the Wrangell people.

Q. Now, prior to the time that the plank road was built over the ground was the Jorgenson mill in operation? [448—408]

A. Yes, sir.

Q. Now, how did the people in the town, the teams from town, have access to that mill?

A. Traveled over the beach.

Q. Where was the road or the place where the teams were driven with reference to this ground that you use an doccupy now and claim?

(Testimony of George E. James.)

A. They were driven over it on the upper portion where the road now stands.

Q. That is, it is practically over the same ground now covered by the road? A. Yes, sir.

Q. Were you one of the petitioners for the construction of that road? A. I was.

Q. State whether or not the construction of that road facilitated your use of that property—the construction of the plank road? A. It did.

Mr. BAYLESS.—Object to that as immaterial and not proper redirect examination.

The COURT.—Objection overruled.

Q. (By Mr. GUNNISON.) In what way?

The COURT.—Well, I don't think you ought to be allowed to go any further.

Q. (By Mr. GUNNISON.) Now, you say you built that first approach in the spring of 1907, that is, the westerly approach? A. Yes, sir.

Q. Did you use that ground over which that approach is built prior to that time? A. Yes, sir.

Q. How?

A. That was my roadway to the gridiron, my way of getting around to the gridiron on both sides.
[449—409]

Q. Did you ever use it in the landing of scows or anything of that kind? A. Yes.

Q. How? A. By mooring them there.

Q. And for how long a period?

A. Oh, that would be hard to say.

Q. I mean, during what period of time—I don't mean how long you moored there?

(Testimony of George E. James.)

A. Oh, during all the time there would be scows tied in there, more or less.

Q. You have testified something as to the building of a platform; do you mean the portion that is now covered by the driveway back of the gridiron, so as not to confuse it with the Davidson platform?

A. I built a platform in there so that when I would get part of the load off and if I wanted the scow back sooner than they could unload it, I would take and unload it off on that platform; then they could keep hauling and I could load again.

Q. Where was this platform—between the gridiron and the road? A. Yes.

Q. Where does it stand—where did it stand with reference to that portion of your structure now used as a driveway? A. The driveway is right over it.

Q. In the same place? A. In the same place.

Q. And the driveway was put in—

A. It would take away half of it.

Q. The driveway was put in 1907?

A. Yes, sir.

Q. As part of your approaches; that is, to facilitate the access to the scow as it lay on the gridiron? [450—410] A. Yes, sir.

Q. By a team? A. Yes, sir.

Q. In this litigation concerning which counsel has interrogated you between the Pacific Coast Company and somebody on the upland, were you a party to that litigation? A. No, sir.

Q. Were you the defendant or plaintiff?

A. I wasn't.

(Testimony of George E. James.)

Q. Were you a witness in the case?

A. I Wasn't.

The COURT.—Well, I ruled those questions out, Judge Gunnison, virtually. The witness never testified to anything on cross-examination; consequently, I cannot see how this is redirect examination.

Mr. GUNNISON.—I thought your Honor admitted the question with reference to litigation over the upland.

The COURT.—There was no objection made to it to start with, but the witness has answered it that he didn't know anything about it.

Mr. GUNNISON.—Well, I withdraw that and consent that it may be stricken then.

The COURT.—Very well.

Q. (By Mr. GUNNISON.) Now, how much of that 113 feet are you now occupying and using?

A. All of it.

Q. And were you using it at the time of the commencement of this action?

A. I was using it all. [451—411]

Q. How much of it do you need for the purposes of your business?

Mr. BAYLESS.—Object to that as immaterial.

The COURT.—It is not redirect examination.

Q. (By Mr. GUNNISON.) When you went on the ground in 1900 did you see any location notices or stakes—location stakes—of the Pacific Coast Company or any other party on this ground in controversy? A. I did not.

The COURT.—Now, you didn't ask him that, but

(Testimony of George E. James.)

Mr. Bayless asked him on cross-examination and he said there wasn't; consequently there was nothing new brought out.

Mr. GUNNISON.—All right, sir, I will withdraw the question.

Mr. BAYLESS.—If the Court please, I have this recollection of that—I think I asked him if there were any piles or posts.

The COURT.—He is asking him about location notices.

Mr. GUNNISON.—I think he has already testified to the piles.

Q. Counsel interrogated you with reference to your use of the platform—of the Davidson platform, so-called—did you obtain any permission to use that?

A. No, I did not.

Q. And your use was only a casual use, as you testified? A. Yes, sir.

Mr. GUNNISON.—That is all.

Recross-examination.

(By Mr. BAYLESS.)

Q. Do you know whether Davidson saw you use this platform?

A. I do not; he might have seen me using it and he might not.

Q. At the time this suit was brought were you claiming a piece of [452—412] tide lands 113 feet square?

The COURT.—Square?

Mr. BAYLESS.—Yes, square.

A. It wouldn't be square. Of course, I needed

(Testimony of George E. James.)

deep water to get in. It would be 113 feet across and out to deep water.

Q. Were you using every portion of this 113 feet along the beach and out to the water?

A. I had to come in from deep water; there is no other way to get in there.

Q. You came in from the deep water to this gridiron, didn't you? A. Yes, sir.

Mr. GUNNISON.—We object to that as not being proper cross-examination.

The COURT.—Objection overruled—I am not clear about that matter myself.

Q. (By Mr. BAYLESS.) You came in from Gastineau Channel to this gridiron as shown on your exhibit "A"? A. Yes, sir.

Q. Now, Mr. James, you did not use any portion of that 113 feet to the westerly of the gridiron with the exception of the approach to the street, did you?

A. It is almost impossible to land the scow in there with a boat and a scow seventy-five feet long without having to go over this part here. If this was fenced off, I could not get the scow in there. (Witness indicating.)

Q. How big is your scow?

A. I think the scow is 74 feet long.

Q. How big is your gridiron?

A. The gridiron is about seventy feet and overhanging.

Q. The gridiron is as big as your scow?

A. Smaller than the scow, because the scow flares and overhangs on each end. [453—413]

(Testimony of George E. James.)

Q. As a matter of fact, you had no structures with the exception of the approach? A. No.

Q. And you were not using this piece of tide lands between the gridiron and your westerly limit as claimed by you at the time this suit was brought?

A. I was using it, yes, sir.

Q. And landing your scows there? A. Yes, sir.

Q. And it took all the rest of the ground?

A. Yes, and a little more if I had it. It would make it a little more convenient.

Q. Were you using any portion of the tide lands inside this 113-foot claim to the north or toward the uplands from the platform at the time this suit was brought?

A. Yes, there was several structures in there where I would unload lumber.

Q. What were they?

A. Platforms built, piles set and caps on them where we would unload lumber in there and we had a sand platform built in here before that suit was brought. (Indicating.)

Q. Was this space toward the uplands from the gridiron completely covered with structures and in use by you at the time the suit was brought?

A. Completely covered? What do you mean?

Q. Completely covered with sand boxes and such as that, by piles set in the ground

Mr. GUNNISON.—We object to that as irrelevant, incompetent, and immaterial.

The COURT.—Objection overruled.

Q. (By Mr. BAYLESS.) By piles set in the

(Testimony of George E. James.)

ground and covered with caps and stringers, and so on—structures? [454—414]

A. Yes, sir, it was.

Q. Entirely covered?

A. No, there might be a place right in there up toward the westerly approach, by the approach and the street—no, that was used, because there was a tramway there, so it was practically covered.

Q. Was that portion of your 113-foot claim used prior to 1907, when the approach was built?

A. This ground in here?

Q. Yes.

A. It was used with that platform that I had.

Q. You had a platform that extended from the gridiron clear up to where the street is now?

A. Clear up to the street.

Q. And all of that was occupied?

A. All of that platform?

Q. No, everything from the gridiron up to the street was used? A. Yes, sir.

Q. When did you start using that portion of the ground you now claim? A. In here?

Q. Yes.

A. I built a platform in there when I built the gridiron.

Q. In the spring of 1906?

A. In the spring of 1906 and after the approach was built, part of this platform was torn off and then it was extended so we could roll heavier timber in here and leave it for the wagons.

Q. But you had no structures on this ground or

(Testimony of George E. James.)

any portion of it prior to 1906, when you built this gridiron?

A. Yes, sir, I had this gridiron (indicating).

Q. That little gridiron there? A. Yes, sir.

Q. And that was how big? [455—415]

The COURT.—Well, haven't you gone over all that?

Q. (By Mr. BAYLESS.) Did you build any structure between the gridiron and the street since this suit was commenced? A. No, sir.

Q. Did you give permission to any other person or corporation to build any structures in there?

A. I did not; I did not consent. The Alaska-Juneau put them in there and I told them it was their own risk; I had nothing to do with it.

Q. That is on land you claim? A. Yes.

Q. What did the Alaska-Juneau Company do?

The COURT.—Never mind—I can't go into that.

Q. (By Mr. BAYLESS.) Those structures that are now between the gridiron and the street are not occupied by you? A. Now?

Q. Yes.

Mr. GUNNISON.—We object to anything that is there now—the suit goes to the time of the commencement of the action, 1913.

The COURT.—Objection sustained.

Mr. BAYLESS.—All I wanted was for the Court to get a clear idea of the various improvements that exist on the ground there now. If the Court understands that, I haven't anything further to say.

The COURT.—I don't think it makes any differ-

(Testimony of George E. James.)

ence whether the Court has a definite idea as to that now or not.

Q. (By the COURT.) I see on this plat, Defendant's Exhibit "A," a line marked "Line of Young's piles." How long is that line of piles approximately?

A. A hundred and—I should say a hundred and twenty feet. [456—416]

Q. It extends from the shore line out into deep water? A. Yes, sir.

Q. How close together are those piles?

A. The inshore bents, I think they are twelve feet centers.

Q. I mean, how close together are the bents—from one bent to another? A. Twelve feet.

Q. You couldn't get a scow in there, could you?

A. No, sir—oh, yes, a small scow might.

Q. You couldn't get a scow in from there up on your gridiron? A. No, sir.

Q. How far is it from the easterly end of your gridiron as it is now constructed to that line of Young's piles in a direct line—straight line?

A. From the gridiron out?

Q. From the end of your gridiron to the line of Young's piles? A. About ten feet.

Q. How far is it from the westerly end of your gridiron to what you claim is the boundary of your property westerly? I want to know how far it is from the westerly end of your gridiron to the line that is marked "N.D."

A. It might be fifty feet, might be forty-five feet,

(Testimony of George E. James.)

it is hard to say; I wouldn't know exactly—probably nearer forty feet.

Q. How long is it from the westerly end of your gridiron to the line marked "E. H." in a straight line?

A. I can give you the exact figures—twenty-six feet.

Q. I want to know why you have to have more ground on the westerly end of your gridiron than you have to have on the easterly end?

A. Because coming in with the barges or scows you can't come in straight—you have got to turn. You can't do anything here. There is an eddy in this place. [457—417]

Q. (By Mr. GUNNISON.) You came in from west to east? A. From west to east.

Q. State that over again, Mr. James.

A. In coming in here with a boat—

Q. Where with a boat?

A. From deep water, into this gridiron, you have got to come in in this manner and run in here and back up the stern and the boat will swing right here.

Q. Where is "here"?

A. On this part of the ground.

Q. Which part?

A. Westerly part of this ground.

Q. That portion that is marked "N.D."?

A. Yes.

Q. When you put your scows on the gridiron, you put them on longitudinally with the beach—parallel with the beach?

(Testimony of George E. James.)

A. Yes, sir. Then another thing, there is no way to get up from the beach except by this approach.

Q. (By the COURT.) Well, when the C. W. Young line of piles was built on that side, why didn't you object to that, because it cuts you off from that side? A. Why, I drove these piles there.

Q. You drove them for yourself?

A. Yes, sir; I didn't know I was driving these on the line with the exception of these few here. I continued these piles so as to have mooring places.

Q. You marked some improvements "N.I."; what do you expect to put in there?

A. Another gridiron and driveway.

Q. A wharf? A. A gridiron. [458—418]

Q. You don't expect to reach above the surface of the water?

A. I had no intention at that time.

Q. Have you intention at this time?

A. I have not at present.

Q. If you build a gridiron there, can you use the gridiron which you have marked "James Gridiron"?

A. Yes, sir.

Q. You can use both gridirons?

A. I would put this scow in first—this scow in last. Put this scow in on the old gridiron, moor it, and run the second scow—it can be run in on the new gridiron and this same driveway that extends down through here over in this direction can be utilized for both of them.

Q. (By Mr. BAYLESS.) Mr. James, isn't it your practice to put a gas boat or a tug behind these

(Testimony of George E. James.)

scows and bump them in to the gridiron?

A. We come in on high tide. If we should bump them in, would be on top of this driveway. I have got only two piles, one at each end of the gridiron, up against the driveway.

Q. (By Mr. GUNNISON.) Between the gridiron and the driveway?

A. Between the gridiron and the driveway; that gives free access to the driveway from the scow.

Q. (By Mr. BAYLESS.) Do you take any more ground than that claimed by you in landing your scows?

A. Can't now, it is all piled in there; the ground is all piled.

Q. (By Mr. GUNNISON.) What do you mean?

A. The ground to the west of this line here is all piled in.

Q. (By the COURT.) The line "N. D."?

A. Yes, the line "N. D."

Q. (By Mr. GUNNISON.) You said this was twenty-six feet from the line "N. D." to the line "E. H." and the line from "E. H." to the line of your gridiron—How far is it from the line "N. D." to the line "E. H."? [459—419] A. Twenty-six feet.

Q. Now, from the line "E. H." to the westerly end of your gridiron?

A. Twenty feet probably—couldn't tell exactly.

Q. Then you would say from the line "N. D." to the westerly line of your gridiron is forty-six feet approximately?

A. I would say that was as near as I can come to it.

(Testimony of George E. James.)

Q. And I understand you to say that all to the west of the line "N. D." is piled in? A. Yes, sir.

Q. It is twenty-six feet—Who piled it in and when was it piled in? A. This portion?

Q. In the west line "N. D."

A. In 1913 it was piled in there by Alex Hart.

Q. Prior to that time you had been going over that land to get in to your gridiron? A. Yes, sir.

Q. (By the COURT.) Have you ever tried to get in to your gridiron after those piles have been built by passing over that open space between the lines "N. D." and the end of your gridiron.

A. Yes; have come in there all summer with lumber.

Q. Do you ever go in any other way?

A. Sometimes if there is anything on here, I run the scow in here and tie up here and wait for this to be discharged.

Q. I am not talking about any increased business, but the business you have been doing on that gridiron and the size of the scows that you have carried on business with on that gridiron.—Is it possible and practicable for you to land scows on your gridiron if you don't own this piece from "N. D." to "E. H."?

A. It is, yes, sir, but it is very hard to handle, very hard, I couldn't land the scow without this with the boat. I would have to drop the boat and get a hold of the piles here with a pike pole, because I can't swing with the boat and scow in here. [460—420]

Q. Do you consider that the space between the

(Testimony of George E. James.)

line "N. D." and the line "E. H." is absolutely necessary for you to own or to have in order to get scows into your gridiron? A. It is.

Q. Your gridiron as it is now constructed and the character of the scows that you have been using?

A. It is necessary for that business.

Q. And you have been using that piece of land, have you?

A. Yes, and more; before this was driven I used more of it.

Q. Yes, but if the tide land westerly of the line "N. D." has been piled in—That is an established fact in the case that that has been piled in—Now, does the piling in of that make any difference in the practicability of getting scows into your gridiron?

A. It does to a certain extent; it does hamper me from getting in there to a certain extent.

Q. But you didn't enjoin them from hampering you, did you?

A. Why, I only claim up to here, your Honor.

Mr. GUNNISON.—To the line "N. D."

Q. (By the COURT.) But you have not occupied that?

A. I did, yes, in tying up, landing my scows in here, turning around and swinging this boat; I have always used it.

Q. (By Mr. BAYLESS.) Since this suit has been commenced, haven't you been occupying the space between the lines "N. D." and "E. H." by little rafts and things; haven't you had that space all covered up, tied boats in there, and isn't that the

(Testimony of George E. James.)

way the situation is at the present time?

A. There is a cradle lying in there now.

Q. Lying in that space? A. Yes, sir.

Q. You have been landing your rafts or your scows onto the gridiron, haven't you? [461—421]

A. I haven't been landing any lately.

Q. Have you landed any on the gridiron since this cradle has been in that space?

A. I think I have a small scow.

Q. It is perfectly possible to occupy this space to get in there? A. With a small scow.

Q. It is perfectly possible for you to get in this space even if it is piled?

A. By untying the boat and holding on to the piles.

Q. It would be a little more convenient for you to have more space, but it isn't absolutely necessary?

A. A landing can be made without by poling the scow in and tying the boat outside.

Q. It is merely a matter of convenience, isn't it?

A. It is merely a matter of convenience to turn and to have this space so I can land and it is necessary so I can land the scow with the boat. A scow couldn't land with a boat without that.

Q. It isn't necessary for a scow to be with a boat?

A. Not absolutely necessary, no.

Redirect Examination.

(By Mr. GUNNISON.)

Q. Mr. James, you say that prior to the commencement of this suit, prior to the time the line

(Testimony of George E. James.)

“N. D.” was piled in, in landing you sometimes came across that ground, the beach lying to the westward of the line “N. D.”? A. Yes, sir.

Q. Now, what time did you land—at what stage of the tide did you make your landings?

A. At high tide. [462—422]

Q. And what is the situation on the ground on a high tide?

Mr. BAYLESS.—Objection to that as immaterial.

The COURT.—Objection overruled.

A. The tide backs up in here.

Q. (By Mr. GUNNISON.) Just give us our direction—how does it get in there?

A. Well, Judge, it is awfully hard to explain the thing; we know that the tide must strike on this side.

Q. On which side? A. On the east side.

Q. Land side?

A. On the east side of that gridiron and diverts there and goes on up toward the bar and all this water backs up there comes in these docks.

Q. Comes back into the shore moving from a westerly direction to an easterly direction?

A. Yes, sir, and when you get a scow in here—

Q. Now, the Court asked you about piling in this line in which the two piles marked “P. P.” and marked on the plat as Young’s piles—Describe to the Court what the condition of the beach is below or to the eastward of this line of piles known as the Young piles in that immediate vicinity?

A. There is a ridge in here, bar sticking out; it is from a dirt slide and all full of big rocks and if a

(Testimony of George E. James.)

scow would go on there it would wreck it.

Q. So that it never was available as a landing place for a scow? A. No, never.

Q. Now, in 1913, to the westward—I will withdraw that—In 1913 since the commencement of this suit, the line “N. D.” was piled, was it?

A. In 1913?

Q. Yes, sir. A. It was. [463—423]

Q. After the commencement of this suit and all to the westward of it was piled? A. Yes, sir.

Q. By whom, if you know—the Pacific Coast Company, the plaintiff? A. I presume it was.

Q. Now, since that time have you been landing scows on this gridiron? A. Yes, sir.

Q. How have you done it?

A. Just by coming in here.

Q. In where?

A. From the channel to this westward line and sticking the end of the scow in to the easterly line and then swinging right in here with the stern of the boat up here.

Q. Stern end to the westward? A. Yes, sir.

Q. Taking the boat in from west to east?

A. Yes, sir.

Q. How have you landed there, by tug?

A. By gas boat.

Q. Well, you mean a gasoline tug?

A. Gasoline tug, yes, sir.

Q. Now, what do you say as to whether that is the safe and efficient way in which to land a scow there?

Mr. BAYLESS.—Object to that as immaterial and

(Testimony of George E. James.)

not proper redirect examination.

The COURT.—I don't think it makes any difference about the safest and most efficient way. The question is, whether any other way is safe—not whether that is the safest way or not. What I am trying to get at is, why he can't, instead of stopping at "D," we will say, at the line "N. D.," he cannot go in at the line "E. H." [464—424]

Q. (By Mr. GUNNISON.) Why is it necessary, Mr. James, to use the space covered between the lines "E. H." and "N. D." in docking your scows on this gridiron?

A. Well, now, if you will let me explain—

Q. While you explain it, give it so the record will be straight.

A. In towing the scow, in the first place the boat has got to stick out at least half the length of the boat in order—

Q. Which boat?

A. The towboat. In order to steer her. To take a scow 74 feet long and half the length of a 40-foot boat—that would be pretty near 94 feet, wouldn't it? That would be the length of the two crafts, and the tide setting in here. We always landed on a high tide in order to get it on the gridiron and to settle on that place, and the tide is in this way here and would drive you right against the piling—

Q. The C. W. Young line of piles?

A. The C. W. Young line of piles, or this pile that I had driven in between the platform and the gridiron and probably I have at times set the end of the

(Testimony of George E. James.)

scow up on the driveway here. If the tide was setting in too strong, by having this space in here and coming in from the westward direction and landing here and backing up my boat until it comes right in here, it is possible to hold it off from these structures here and get tied up, and in doing that, the length of those two—scow and the boat—would reach very near over to this line.

Q. Which line? A. The line “N. D.”

(By the COURT.)

Q. If you had a gridiron in there and a scow on it, what would be the result?

A. It would be the same, because you come in on high water above. You can't land at low tide.
[465—425]

Q. (By Mr. GUNNISON.) The Court says: What if there was a scow on this portion marked “N. I.”?

A. Then I would have to stop right here with my boat, swing the end of the scow right in here and leave my boat out here.

Q. (By the COURT.) That could be done?

A. Yes, sir.

Q. Practically?

A. It is not practicable—it is too hard to avoid the wharf.

Q. What I am trying to get at, Mr. James, is this: do you want this land for increased business, or do you want it as a means of carrying on the business you have been carrying on?

(Testimony of George E. James.)

A. I want it for the business I have been carrying on this way.

Q. Well, what are you going to build any gridiron in the space between "N. D." and "E. H." for?

A. This gridiron—this here isn't drawn to scale, these marks I have made with a pencil. This approach here is twelve feet wide, this gridiron twenty-four, and this here goes on an angle through here. That leaves me quite a space in on the westerly line—at the westerly end of the gridiron; that is, 24 feet and 12, or 36 feet, and this angle here would probably make it 36,—45 feet probably or very close to it, and laying a 50-foot scow in here would only have ten feet outside of the gridiron to interfere with my landing in here.

Q. (By Mr. GUNNISON.) The Court asks whether it is necessary to use this gridiron here in the space marked "N. I." for the purpose of carrying on the business which you now have and not for prospective business? A. It is necessary.

Q. Why and how?

A. Because—I mean in carrying on the business this won't accommodate it all.

Q. Which one? [466—426]

A. The present one. Because I can't discharge the lumber fast enough here.

Q. (By Mr. BAYLESS.) Mr. James, if you win this case, won't you immediately put in a gridiron over here?

Mr. GUNNISON.—He has testified to that already.

(Testimony of George E. James.)

Mr. BAYLESS.—I thought he was trying to get away from that.

Q. You will put in another gridiron? A. Yes.

Q. (By the COURT.) Well, however you put the gridiron in the space marked “N. I.,” won’t that interfere with your carrying on the business on the place called “James gridiron”?

A. It might interfere with it a little, as that scow would probably stick out ten feet beyond this line.

Q. What do you mean by “that line”?

A. Beyond the northwest line of these piles; it would stick out in towards deep water, but not enough to keep the boat from swinging inshore and landing this scow, because it would give me this swing up in shore, but ten feet would not be sufficient—

Q. You mean that the gridiron that you propose to construct between the lines “N. D.” and “E. H.” would extend toward deep water ten feet beyond the line of the present piles; is that what you mean?

A. Or the present gridiron.

Q. Ten feet to the seaward of the present gridiron? A. Yes, sir.

Q. (By Mr. GUNNISON.) But not beyond the present line of piles and the gridiron wouldn’t go to deep water; is that what you mean?

A. No, sir, that wouldn’t go to deep water.

Q. Counsel has interrogated you with reference to having something on the ground to the seaward of the westerly approach and between [467—427] the lines “N. D.” and “E. H.”; what have you on

(Testimony of George E. James.)

there and how much ground is covered at the present time, if any.

A. There is a cradle laying there for a boat. That floats on every tide.

Q. How far out does that extend?

A. I couldn't say.

Q. How far beyond the seaward line of your present gridiron, if at all?

A. I don't think it extends beyond it; might be out even with it. I haven't paid particular attention to it.

Q. Would you say that interfered with the operation—with the docking of your scows or landing of your scows on the gridiron at the present time?

A. It wouldn't.

Q. I am asking you about what is on there now.

A. No, sir.

Q. (By Mr. BAYLESS.) Doesn't it extend about thirty feet to the seaward of this present gridiron?

Mr. GUNNISON.—You mean from the outside end of the present gridiron.

A. I don't think it would extend outside of the present gridiron, unless it has been moved lately.

Q. (By Mr. ROBERTSON.) Mr. James, if the piece of land you have now extended from the line of the C. W. Young piles over to the line "E. H.," would it be practicable or possible to continue your present business, the business which you had at the time of the commencement of this suit?

A. No, sir.

Q. (By Mr. BAYLESS.) Didn't you tell me it

(Testimony of George E. James.)

would be possible to get scows in there?

A. Not impossible, but it would be impracticable to land a scow in between those two lines. [468—428]

Q. And you could do it in that way and carry on the business you were doing at the time of the commencement of this suit?

A. It is possible to land the scow by hand.

Q. And it is a mere matter of convenience, isn't it, whether you have more ground or are restricted to that?

A. It is not possible to land a scow between these two lines with a boat with any safety. It is not possible—I will answer your other question. It is not possible—on certain stages of the tide it is impossible, because you can go through and break this out or break the gridiron down. There is a very strong tide in there. You can't go in unless it is high tide—it is a beach.

Q. You don't mean to say you can't do it that way, do you, Mr. James, that you can't land your scows that way?

A. It is often unsafe for one thing to try to land by hand. While we have landed by hand by getting a stern line in here, we have landed that way, by one man coming in with a boat and getting the stern line on there, but it is impossible to land without that space so as to back in here and hold the boat.

Q. (By Mr. GUNNISON.) You don't mean to say that it is impossible to do it, but it is very difficult to do it? A. Very difficult to do it.

(Testimony of George E. James.)

Q. (By the COURT.) Well, now, you say that in the space between the line "N. D." and "E. H." you want to build a gridiron; now, suppose you do build a gridiron there—will not the building of that gridiron put out of commission your old gridiron? In other words, when you bring a scow in to the old gridiron, the vessel towing the scow will stick out from the end of the scow about half the length of the vessel; you put the nose of the scow on the end of your gridiron and your vessel swings back—all right now, won't it swing back on the new gridiron at "N. I."? [469—429]

A. We could go out that way. If the scow was 24 feet wide and the scow only come up to these piles, that is, between the gridiron and the driveway, that would be 24 feet from here out, at least to where the boat would swing.

Q. Do I understand you to say this: That the gridiron you intend to build will terminate a great deal to the landward side—will be a great deal to the landward of deep water; do you know what I mean?

A. Yes, sir.

Q. In other words, if you do the way you are contemplating—building a gridiron in the space "N. I."—you mark about what the limits of the gridiron you want to build there will be. Just mark it with a letter.

A. (Witness marks map—Defendant's Exhibit "A.")

Q. Then the new gridiron you want to build there would be approximately enclosed by the space

(Testimony of George E. James.)

S. U. G. Y.? A. Yes, sir.

Q. Then, assuming that you built your gridiron, your new gridiron—S. U. G. Y.—and you want to land a scow on your old gridiron and you come around to where “H” is, past the letter “H,” and put the nose of your scow on the easterly end of your gridiron, then your boat would swing back a little and come in the space between S. U. and H. O.?

A. Yes, sir.

Q. And therefore it wouldn't bump against your new gridiron? A. No, it couldn't.

Q. Then your new gridiron will practically not extend any further in the water than the James Gridiron now standing? A. No.

Recross-examination.

(By Mr. BAYLESS.)

Q. You have never used this space S. U. G. Y. before, have you, prior [470—430] to the bringing of this suit?

A. Oh, yes, there has been lumber handled over this one up here; had sand, gravel, brick and other materials handled over there.

Q. When did you first start using it?

A. That has been there eight or nine years.

Q. How continuously did you use it? When did you first start using this space?

A. After the approach was built.

Q. That is, after 1907?

A. In the year 1907 and afterwards.

Q. But you didn't ever use it prior to that time?

A. Only for tying up rafts and scows.

(Testimony of George E. James.)

Q. Did you ever tie up scows and rafts in there prior to 1907? A. Yes, sir.

Q. When did you first start doing it?

A. Oh, I think in 1900 I had a raft out in there.

Q. Did you ever use any beach to the westerly of this line "N. D." Mr. James?

A. Not in here. There was a platform standing in there. That is the boundary line in there.

Mr. BAYLESS.—That is all.

Redirect Examination.

(By Mr. GUNNISON.)

Q. What would be the level of the platform, or the gridiron S. U. G. Y. with reference to the James gridiron? A. Exactly the same.

Q. And how are they built with reference to medium low water?

A. They are four feet below and eight-foot high.

(Whereupon Court adjourned until 2 P. M., the same day, when Court reconvened pursuant to adjournment.) [471—431]

Mr. BAYLESS.—I don't think I have any more questions to ask Mr. James.

Mr. GUNNISON.—I haven't any more.

(Witness excused.)

Mr. BAYLESS.—Call Mr. Messerschmidt.

Mr. GUNNISON.—Wait a minute. We didn't apprehend that counsel was going to finish with Mr. James so quickly. We would like to have about five minutes to get some records. We might say that we want to get a couple records from Mr. Marshall's

office, but Mr. J. B. Marshall is right in the midst of a trial—

The COURT.—I cannot have this Court wait on Judge Marshall. Haven't you any other witness you can put on the stand?

Mr. GUNNISON.—Call Mr. Ewing. [472—432]

[Testimony of S. H. Ewing, for Defendant.]

S. H. EWING, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. GUNNISON.)

Q. Mr. Ewing, have there been two surveys of the Pacific Coast Company's tract?

A. There has, to my knowledge.

Q. How were the blocks, the two waterfront blocks at the easterly end, or down-channel end, of the tract numbered in the first survey, if you remember?

A. In the first survey they weren't numbered.

Q. Lettered then—I don't mean the beach, I mean the upland. A. On the original survey?

Q. Yes, sir.

A. They were in letters.

Q. What were those two easterly blocks?

A. S and T, I think they were.

Q. In the resurvey how have those been renumbered? A. They are three and four in block three.

Q. Covering what?

A. The two easterly lots, the easterly division.

Q. They were formerly covered by block T?

A. By block T.

(Testimony of S. H. Ewing.)

Q. And is part of the block S in the new block three?

A. Practically all of it is in block three.

Q. What is the lot in the old block S and now part of the block three that is on the upland above the westerly end of the James' approach?

A. That is Lot One in Block S. [473—433]

Q. And it is lot what in block three?

A. Lot two in block three.

Q. Now, in the new survey has any part of the old Block T been dedicated as a street?

A. Not as a street; as a stairway, four-foot stairway.

Q. Where is that?

A. That is on the south or easterly end of the plat.

Q. How wide is that? A. Four feet.

Q. You are the agent of the Pacific Coast Company? A. I am.

Q. Have lots one and two of the old Block T, or three and four of block three, been sold?

A. They have.

Q. Have lots one—a lot which was formerly Lot one of Block S, and is now Lot two of Block three been sold? A. It has, the upland.

Q. So that the Pacific Coast Company is not the owner of any of those now?

A. Well, they were sold on contracts; no deeds have been passed.

Q. But contracts for deeds have been passed?

A. Contracts for deeds are in existence now.

Q. The entire waterfront which extends in front

(Testimony of S. H. Ewing.)

of the whole of the Pacific Coast Company's upland claim, known as the Pacific Coast Addition at Juneau, has been platted?

A. The waterfront part of it?

Q. Yes, sir.

A. Yes, sir, the survey of it was made.

Q. That is known as Block One? A. Yes, sir.

Q. Have either lots—I will withdraw that—what are the waterfront [474—434] lots that have been platted and numbered on that plat and what is the block—

The COURT.—Which plat is that?

Mr. GUNNISON.—That is Plaintiff's Exhibit 19, I think.

Q. What are the numbers on that plat of the blocks—what are the numbers of the lots on that plat which cover the ground included or the ground in controversy here?

A. Ten, eleven, twelve, thirteen, fourteen and fifteen—and part of fifteen and not all of ten either.

Q. Have those been sold?

A. There is an agreement to sell them pending settlement of this present lawsuit.

Q. Isn't there a deed to Mr. Messerschmidt from the Pacific Coast Company for at least part of this ground already on record? A. I believe there is.

Q. How much of that? A. Of what?

Q. Of this ground has been deeded to Mr. Messerschmidt?

A. One lot; I don't remember whether it is fourteen or fifteen.

(Testimony of S. H. Ewing.)

Q. Have there been deeds for any other of those lots included in this ground made?

A. The ground in dispute?

Q. Yes, sir.

A. Not that I am aware of.

Q. But there have been contracts made with others?

A. I think Mr. Messerschmidt has an option on one of the other ones; I don't remember whether it was fourteen or fifteen.

Q. How much of Lot 15 is in controversy—Lots 15 and Lot 10?

A. My understanding is where the ground joins this street?

Q. Yes, sir.

A. I don't remember exactly; I think it is about—somewheres around thirty feet of Lots 15 and 10.
[475—435]

Q. And one of those lots has been conveyed to Mr. Messerschmit and he has the option on the other?

A. Yes, sir; that is covered by an agreement pending the outcome of this suit.

Cross-examination.

(By Mr. BAYLESS.)

Q. What is the situation with reference to any reservations of the littoral rights to these lots conveyed?

Mr. GUNNISON.—We object to that as not the best evidence.

The COURT.—Do you mean what are the reservations in the deeds?

(Testimony of S. H. Ewing.)

Mr. BAYLESS.—In favor of the company with reference to these options.

The COURT.—You mean there are reservations in the writings about conveying the land?

Mr. BAYLESS.—Yes, sir.

The COURT.—Objection sustained.

Q. (By Mr. BAYLESS.) Mr. Ewing, has the Pacific Coast Company conveyed any of the property desired to be used by it in its contemplated wharf site?

Mr. GUNNISON.—We object to that as irrelevant, incompetent, and immaterial, as calling for a conclusion, and is not proper cross-examination.

The COURT.—Objection overruled

A. They have not.

Q. (By Mr. BAYLESS.) Has any of this property, either uplands or tide lands, been absolutely sold by the company to any person?

Mr. GUNNISON.—We object to that on the ground that it is irrevelant, incompetent, and immaterial, and not the best evidence. The instruments themselves, contracts or deeds, are the [476—436] best evidence.

The COURT.—If the question has relation to the writing, of course it isn't the best evidence. Do you mean "Have there been reservations in the writings conveying this property"?

Mr. BAYLESS.—No—"Have there been any absolute deeds passed for these uplands or tide lands."

Mr. GUNNISON.—We object to that, as the ques-

(Testimony of S. H. Ewing.)

tion calls for an answer from the witness which is a conclusion of law—whether the deeds are absolute or otherwise—and the instruments themselves are the best evidence.

Q. (By the COURT.) Are there any instruments of writing evidencing these conveyances from the Pacific Coast Company to anybody else?

A. Upon the uplands?

Q. Uplands or tide lands?

A. There are deeds and contracts for deeds.

The COURT.—They are the best evidence, Mr. Bayless.

Mr. BAYLESS.—Certainly; I merely wanted to ask him this:

Q. Are those instruments deeds or contracts for deeds? A. They are both deeds and contracts.

Mr. GUNNISON.—We object on the ground that the instruments are the best evidence.

The COURT.—Objection sustained.

Q. (By the COURT.) Mr. Ewing, did I understand you to say that lots 13, 14 and 15 are no longer owned by the Pacific Coast Company? A. No, sir.

Q. What did you say with reference to those lots on Plaintiff's Exhibit 19?

A. The lots in dispute are 10, 11, 12, 13, 14 and 15, and just a part of 15 and 10.

Q. Part of 15 and part of 10 have been conveyed away?

A. No, they are in dispute—that is, two have been conveyed. [477—437]

Q. Speaking now of Plaintiff's Exhibit 19, has lot

(Testimony of S. H. Ewing.)

13 been conveyed? A. It has not.

Q. Has lot 14 been conveyed? A. Yes, sir.

Q. Has lot 15 been conveyed? A. Yes, sir.

Q. Has lot 10 been conveyed? A. No, sir.

Q. Has lot 11 been conveyed? A. No, sir.

Q. Lot 12? A. No, sir.

Q. Lot one in Block T of the uplands—has that been conveyed?

A. At the present time that is Lot four in Block 3; that is, in the original survey one and two in T, and now it is three and four in Block three.

Q. Have lots three and four been conveyed?

A. Contract for a deed.

Q. Has Lot 2 in Block 3 been conveyed?

A. By contract for a deed.

The COURT.—That is all.

Q. (By Mr. BAYLESS.) Do you know whether or not, Mr. Ewing, any of this property had been contracted to be sold prior to the institution of this suit?

Mr. GUNNISON.—We object to that as the instruments themselves are the best evidence.

The COURT.—Objection overruled.

A. All that had been.

Q. Contracted to be sold prior to the time this suit was commenced? A. Yes.

Mr. BAYLESS.—That is all.

(Witness excused.) [478—438]

[Testimony of J. B. Marshall, for Defendant.]

J. B. MARSHALL, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. GUNNISON.)

Q. Mr. Marshall, you have been called heretofore as U. S. Commissioner and Ex-officio Recorder for the Juneau Recording Precinct? A. Yes, sir.

Q. Will you please state what this is?

A. 24 deeds, records—

Q. Of your office? A. Yes, sir.

Q. Will you kindly turn to page 13 of that book and state what is recorded there?

A. That is a deed from the Pacific Coast Company to Gustav H. Messerschmidt.

Q. Covering what property?

A. Lot fifteen in block one of the Pacific Coast Addition to the Town of Juneau.

Q. Under what date?

A. The deed is dated the 10th of May, 1913.

Mr. GUNNISON.—We offer that in evidence and request permission to substitute a certified copy.

The COURT.—Any objection?

Mr. BAYLESS.—Just on the ground of its immateriality.

The COURT.—Objection overruled. You may have permission to substitute a certified copy.

(Admitted in evidence and marked Defendant's Ex. "B.")

Q. (By Mr. GUNNISON.) Will you look at this book and state what that is?

(Testimony of J. B. Marshall.)

A. Book of Trustee's Deeds. [479—439]

Q. Is that one of the records of your office?

A. Yes, sir.

Q. Will you look at page 645 of that book and state what it is?

Mr. BAYLESS.—What is the page?

Mr. GUNNISON.—It is right in the last of the book.

Q. Is that instrument or plat a record of your office? A. Yes, it forms part of the records.

Q. Just state what that is, will you please?

A. It is a plat of the Pacific Coast Addition to the City of Juneau, dated the 28th day of February, 1913. containing a description of the Pacific Coast Addition and an acceptance by the City of Juneau and the dedication by the Pacific Coast Company of the streets and alleys shown on the plat.

Q. Under what date is that dedication made?

A. Twelfth day of February, 1913, and acknowledged.

Mr. GUNNISON.—We offer that in evidence, your Honor.

Mr. BAYLESS.—No objection.

The COURT.—Well, you will have to have a blue-print made or a tracing and substitute it for this.

Mr. GUNNISON. We will have a certified copy of the blue-print or tracing made of it. That is all, Mr. Marshall.

(Admitted in evidence and marked Defendant's Ex. "C.")

Q. (By Mr. BAYLESS.) Mr. Marshall, I call

(Testimony of J. B. Marshall.)

your attention to the deed from the Pacific Coast Company to Mr. Messerschmidt and ask you to read the third from the last paragraph.

The COURT.—Is that the one that is already in evidence?

Mr. BAYLESS.—Yes, but I would like to call your attention to it now.

A. (By the WITNESS.) “And the grantee covenant that all rights and privileges to purchase, acquire or occupy tide lands or waters in front of abutting upon or adjacent to, said described premises now or hereafter granted by any public authority shall pass and inure to the benefit of the grantor, its successors and [480—440] assigns, without further conveyance and this covenant shall run with the land above conveyed and be binding upon all subsequent owners and occupants thereof.”

(Witness reading.)

Mr. BAYLESS.—That is all.

(Witness excused.)

Mr. GUNNISON.—We rest. [481—441]

[Testimony of Gustav H. Messerschmidt, for Plaintiff (in Rebuttal)].

GUSTAV H. MESSERSCHMIDT, a witness called and sworn in behalf of the plaintiff, testified in rebuttal as follows:

Direct Examination.

(By Mr. BAYLESS.)

Q. State your name?

A. Gustav H. Messerschmidt.

(Testimony of Gustav H. Messerschmidt.)

Q. Where do you reside? A. Juneau.

Q. When did you first come to Juneau, Mr. Messerschmidt? A. In April, 1899.

Q. Have you resided in Juneau ever since?

A. Yes, sir.

Q. Have you made this your home?

A. I have made this my home.

Q. Do you know the piece of property in controversy between the Pacific Coast Company and Mr. James? A. I do.

Q. When did you first become acquainted with that property?

A. Well, the first time it was in May '99.

Q. What was the situation with reference to that property at that time?

A. I was looking for a location to put some wood on that I used for the bakery.

Mr. GUNNISON.—We desire at this time to object to any further evidence in the case on the part of the plaintiff, on the ground, first, that it now appears in the evidence that the plaintiff was not the owner either of the upland or of the ground in controversy; that it has all either been deeded away or contracts entered into for the sale of it to other persons and that they are not the proper party in interest. [482—442]

The COURT.—The objection will be overruled.

Mr. GUNNISON.—Exception.

Q. (By Mr. BAYLESS.) What, if anything, did you do upon this particular piece of land, Mr. Messerschmidt, in 1899?

(Testimony of Gustav H. Messerschmidt.)

A. Well, I was looking for—

Mr. GUNNISON.—We object to that as not proper rebuttal. So far as we have gone back in our case in chief, is 1900. It was their case in chief to develop anything up to 1900.

Mr. BAYLESS.—I will state, if the Court please that I anticipate being able to prove a chain of circumstances beginning with 1899 more or less connected with our case; for that purpose, I have started in 1899.

The COURT.—Is it a chain of circumstances that will rebut anything?

Mr. BAYLESS.—I apprehend that it will.

The COURT.—What will it rebut?

Mr. BAYLESS.—It will rebut Mr. James' assertion that he exclusively used this beach from 1900 on down.

The COURT.—How is it going to be rebuttal to prove that somebody occupied it in 1899, a year before 1900?

Mr. BAYLESS.—It isn't proper rebuttal as to that, if the Court please. We propose to show that Mr. Messerschmidt used this beach in 1899, 1900, and perhaps some other years.

The COURT.—What is the use of going back of 1900, because there is nothing to rebut prior to 1900.

Mr. BAYLESS.—All right, sir, I will take an exception to that and ask leave to be permitted to ask it later should it appear relative at that time.

The COURT.—We will pass on it when it arrives.

Q. (By Mr. BAYLESS.) Mr. Messerschmidt,

(Testimony of Gustav H. Messerschmidt.)

what, if anything, did you do upon that property in the year 1900?

A. I brought some wood in the spring of 1901. To put some wood up [483—443] there, cord-wood.

Q. Did you do anything with reference to the use of this piece of beach in 1900?

A. No, I had a little wood, but not much, perhaps two cords in 1900.

Q. Did you obtain permission to use that beach from any person?

Mr. GUNNISON.—We object to that question as leading.

The COURT.—Yes, it is leading.

Mr. BAYLESS.—I will reform it.

Q. Mr. Messerschmidt, how did you happen to go upon that particular piece of property?

A. Well, I was informed that it was the Pacific Coast Company's property and the first talk was with Mr. Hart.

Q. Who was he?

A. He was then in the office of the Pacific Coast Company. And then when I made the location I put the wood on there—Dautrick was there then.

Q. What, if any, arrangement did you have with Mr. Hart?

A. Well, he told me I could use it, providing I would make no claim to the ground.

Q. That was in what year?

A. That was in 1900.

Q. Well, did you use this piece of beach land in 1900?

(Testimony of Gustav H. Messerschmidt.)

A. Perhaps two weeks; I had a couple cords of wood on in 1900.

Q. Where, with reference to the present gridiron claimed by Mr. James, was that situated?

A. Right behind it.

Q. Did you observe—

The COURT.—Just a moment. What do you call “behind it”?

A. Well, where the present street goes through now.

Q. Between the present gridiron and the street?

A. Yes.

Q. (By Mr. BAYLESS.) Did you see any evidence of the beach having [484—444] been cleared of boulders or driftwood? A. No.

Mr. GUNNISON.—We object to that question as leading and ask to have the answer stricken.

The COURT.—The answer may be stricken. What is your objection?

Mr. GUNNISON.—It is leading.

The COURT.—Very well, reform your question.

Q. (By Mr. BAYLESS.) Mr. Messerschmidt, will you describe the appearance of the beach in 1900—describe how it looked to you with reference to boulders or driftwood, or any structures or anything?

A. Well, it looked like it looks now—no street, no gridiron, no nothing.

Q. Was a permanent structure there at that time?

A. No, nothing.

Q. (By the COURT.) What time, in 1900?

(Testimony of Gustav H. Messerschmidt.)

A. In 1901.

Q. (By Mr. BAYLESS.) What part of the year 1901?

A. Well, I think it was perhaps in February, March—something like that.

Q. How long did you use this beach in 1901?

A. Well, till all that wood was used up; there was about forty-five cords there.

Q. How long was that?

A. Perhaps a year and a half.

Q. Did you have cordwood upon that beach for a year and a half? A. Yes.

Q. Beginning at what time; was it 1900 or 1901?

A. In 1900 it was only there a couple weeks.

Q. And in 1901 you put forty-five cords on the beach? A. Yes, sir.

Q. And how long did that stay on the beach?
[485—445]

A. Perhaps a year and a half—until it was all burnt up.

Q. Where, with reference to the uplands or tide lands was this wood situated?

A. Well, right where the present gridiron is located—put the wood on the beach there so the June tide wouldn't take them out, but never had enough out, so it was on dry land practically.

Q. How did you get the wood into this piece of beach? A. We drove along the beach.

Q. Drove to and from that beach for your wood?

A. Yes.

Q. Where did the wood come from, in the Sheep Creek direction?

(Testimony of Gustav H. Messerschmidt.)

A. Between Juneau and Sheep Creek on the mountain side.

Q. How did it come?

A. It was cut and rolled down the hill in four-foot lengths and split on the beach.

Q. Was it brought up in rafts or brought up on the beach in wagons? A. Rafts.

Q. Where, with reference to the present gridiron were those rafts landed?

A. Just about in there, that land.

Q. And you piled them up? A. Yes.

Q. Most of it on the tide lands and part on the uplands?

A. Yes, on the line to protect it from the average tide.

Q. Did you see any evidence of any occupation on that particular piece of beach by Mr. James?

A. No.

Mr. GUNNISON.—We object to the question as leading and move to strike his answer.

The COURT.—The answer will be stricken; reform the question.

Q. (By Mr. BAYLESS.) Mr. Messerschmidt, did you see Mr. James in and [486—446] about that particular piece of property in 1900?

Mr. ROBERTSON.—Object to that as leading.

The COURT.—Yes, it is just as leading as the other question. Still, I don't know, Mr. Robertson, how he would ask that kind of a question when the thing you want to find out is whether a person saw another person.

(Testimony of Gustav H. Messerschmidt.)

Mr. ROBERTSON.—I should think he would say: “Who did you see on the property and what evidence did you see of occupation?”

The COURT.—This particular question is the one objected to: “Did you see Mr. James?” Objection overruled.

A. I saw him one time bring blocks for the tunnel up here—square blocks.

Q. (By Mr. BAYLESS.) Where did—what did you see Mr. James doing?

A. He drove them there and right in front of my wood and hauled them away up in the Basin.

Q. What, if anything, did you see with reference to any sign of occupation by anyone?

A. No, not at that time.

Q. What have you to say with reference to the beach having been cleared of boulders or driftwood?

A. No, nothing cleared.

Mr. ROBERTSON.—Object to that as leading and suggestive—he is getting right back to “Did you see any boulders cleared off?”

The COURT.—“What, if anything, did you see with reference to boulders?”

Mr. ROBERTSON.—That wasn’t the question.

Mr. BAYLESS.—With reference to boulders or driftwood being cleared off the beach.

The COURT.—Objection overruled.

Q. (By Mr. BAYLESS.) Do you understand that question, Mr. Messerschmidt? [487—447]

A. In regard to boulders? Well, ordinary rough beach like any other beach; nothing cleared or any-

(Testimony of Gustav H. Messerschmidt.)

thing improved on it.

Q. Is there any difference in the appearance of that beach at the present time than when you first saw it?

A. With the exception that the street goes through, and that gridiron and that stuff, but the other is no improvement on it, no.

Q. Was there any evidence that this beach had been cleared of boulders or driftwood?

Mr. ROBERTSON.—Object to that as leading.

The COURT.—Objection sustained.

Q. (By Mr. BAYLESS.) Mr. Messerschmidt, how long did you use this particular piece of beach?

A. Well, in 1903 we got the last load of wood from Lemon Creek.

Q. How frequently did you have occasion in 1900, one, two, and three to be upon this piece of property?

A. |Oh, perhaps once a week anyhow, I made a trip to look after my wood.

Q. What have you to say about anyone else being on the ground there?

A. I didn't notice anyone particularly—not permanent that would come. Sometimes they would tie up a boat like one Indian who had his canoe in there all the time behind my wood-pile.

Q. Did you see anybody else there?

A. No; in 1903 I see street planks there off a scow.

Q. Did you see anyone landing lumber there during that period of time?

A. Well, they were taking it off the scow onto the beach.

(Testimony of Gustav H. Messerschmidt.)

Q. Who was doing that?

A. Well, it was said it was delivered by Mr. James to the Juneau City.

Q. Did you see Mr. James on that ground frequently in 1903?

A. I didn't see him personally myself and it was in the evening paper that the city bought the street planks in Douglas and that the Juneau merchants can go hungry— [488—448]

Mr. GUNNISON.—We move to strike—well, all right.

Q. (By Mr. BAYLESS.) How frequently did you see Mr. James landing lumber on this property in 1903?

A. Well, it was twice that I seen him—that he had a scow there.

Q. Can you mention the names of any other persons there?

A. No, they were laborers. They are not here any more, I guess.

Q. What did you say with reference to having a conversation with Mr. Dautrick?

Mr. GUNNISON.—He didn't say anything about that.

Mr. ROBERTSON.—We object to that as not being binding on the defendant, is hearsay, and comes from their own witness, and it is leading. He said something about Mr. Hart.

The COURT.—How about that, Mr. Bayless?

Mr. BAYLESS.—I was under the apprehension that Mr. Dautrick gave him permission.

(Testimony of Gustav H. Messerschmidt.)

A. He did, the second time.

Mr. GUNNISON.—We move to strike that.

The COURT.—Ask him the direct question and then it can be objected to and the matter will be passed upon.

Mr. BAYLESS.—I thought he said that.

Q. Did you have any conversation with Mr. Dautrick with reference to this property? A. I had.

Mr. GUNNISON.—We move to strike his answer.

The COURT.—It will be stricken.

Mr. GUNNISON.—And we object to any conversation between this man and Mr. Dautrick as not in any way binding on the defendant, is not rebuttal testimony, and it is incompetent, irrelevant, and immaterial. Mr. Bayless was permitted to show acts of ownership, if that is what he is getting at, in his case in chief and this is another attempt—
[489—449]

Mr. BAYLESS.—It is a whole lot more than that, because Mr. James has pretended to prove an exclusive possession from 1900. I propose to show by this witness that for at least two or three years Mr. James didn't have exclusive possession and how this witness' possession came about.

The COURT.—You can show that instead of Mr. James having exclusive possession, this witness has had possession. How has this conversation anything to do with it?

Mr. BAYLESS.—It is merely preliminary as to what the conversation was.

The COURT.—Of course, it is preliminary to what

(Testimony of Gustav H. Messerschmidt.)

the conversation was, but what the conversation was is not competent. Objection sustained.

Q. (By Mr. BAYLESS.) Mr. Messerschmidt, did you claim this particular piece of property?

Mr. ROBERTSON.—We object to that as not the best evidence, irrelevant, incompetent, and immaterial, not binding on this defendant whether or not Mr. Messerschmidt claimed this property, and is indefinite as to time.

The COURT.—You may ask this man whether he claimed this property through Mr. James in any way,—whether Mr. James gave him any permission, or whether he was an occupant of the property in hostility to Mr. James, because that would be rebuttal.

Q. (By Mr. BAYLESS.) Mr. Messerschmidt did Mr. James give you any permission to use this beach? A. No.

Q. Did you recognize that Mr. James had any rights to that beach? A. No, not at all.

Mr. ROBERTSON.—We object to that as incompetent, irrelevant, and immaterial, calls for a conclusion, is not rebuttal as far as I can see, and, furthermore, it wouldn't be binding on Mr. James as to whether or not Mr. Messerschmidt recognized his claim. [490—450]

The COURT.—It would be simply dilating a little on the question that this man occupied the property in hostility to Mr. James. I think you have developed that fact already by this witness, Mr. Bayless.

(Testimony of Gustav H. Messerschmidt.)

Mr. ROBERTSON.—Exception.

Q. (By Mr. BAYLESS.) Was your possession hostile to Mr. James?

Mr. ROBERTSON.—Same objection to all this line of questions.

The COURT.—I will permit him to answer that question, but I think you have about gone far enough.

Mr. ROBERTSON.—That calls for a conclusion of the witness. It is not the question your Honor ruled on at first.

The COURT.—Yes, but that objection wasn't made until you made it now, that it calls for a conclusion of the witness. I was not passing on that objection. If you object to it on the ground—Q. Do you know what hostile means?

A. I do.

The COURT.—Very well, you may ask him the question.

Q. (By Mr. BAYLESS.) Mr. Messerschmidt, was your possession hostile to that of Mr. James?

A. Not exactly, no.

Q. What was it?

Mr. ROBERTSON.—We object to that. He has answered the question and we object to any further interrogation along that line. He said his possession wasn't hostile to Mr. James in answer to the question.

The COURT.—Objection overruled.

Q. (By Mr. BAYLESS.) Well, what did your possession amount to?

Mr. ROBERTSON.—Object to that as irrelevant,

(Testimony of Gustav H. Messerschmidt.)

incompetent, and immaterial, as calling for a conclusion, and is argumentative.

The COURT.—Objection overruled.

Mr. ROBERTSON.—Exception.

A. I entered into contract for the two lots. [491—451]

Mr. ROBERTSON.—We object to that as not responsive.

The COURT.—It will be stricken out.

Q. (By Mr. BAYLESS.) Mr. Messerschmidt, do you know anything about this property from 1903 down to August, 1913? A. Yes, I do.

Q. Do you know who, if anyone, occupied this beach in 1904?

A. Well, most anybody that wanter to tie a boat. There was no float that way nowheres.

Q. Can you name any person or persons who used this beach in 1904?

A. Well, I don't know; most of them people have gone; there is very few people that were here in 1904.

Q. What have you to say with reference to Mr. James using this beach in 1904?

A. Well, I didn't see him much in 1904.

Q. How often were you down there in 1904?

A. Oh, once a week, two or three times.

Q. What have you to say with reference to Mr. James landing scows or rafts there in 1904?

A. Once or twice he landed a scow there—didn't land much at that time.

Q. Were there any structures on the beach in 1904?

A. No, I didn't see any.

(Testimony of Gustav H. Messerschmidt.)

Q. Do you know when the first structure was erected on that beach?

A. First one when Perseverance lumber came here; some one put a gridiron there.

Q. Do you know what year that was?

A. I think it was 1905.

Q. Do you know who erected that gridiron—was it a gridiron or a platform?

A. Well, I do not know; it was a couple of posts planked over driven in there.

Q. Do you know who put that up? [492—452]

A. No, not exactly. I know they brought the lumber for the Perseverance Stamp Mill.

Q. Do you know where that lumber came from?

A. Yes.

Q. Where? A. Wrangell.

Q. Did you ever see anyone occupy this platform?

A. The Perseverance Company used it, taking lumber off.

Q. Did you ever see anybody else use that?

A. No, not particularly.

Q. Prior to the time this platform was erected, was there any structure on the beach?

A. I don't know of anything being there.

Q. Did you have occasion to go down there frequently? A. Yes.

Q. What was the occasion?

A. I used to go down there with bread.

Q. Well, do you know when the next structure was put on this piece of beach, the next building, gridiron or platform?

(Testimony of Gustav H. Messerschmidt.)

A. The next thing there was a walk built from the street, so you could get down with the team on the westerly side.

Q. Was the plank street put through there before the platform was built?

A. Yes, about 1906, I think; that was built down there in 1907 from the street down to the gridiron.

Q. The approach? A. Yes.

Q. Well, do you know when the gridiron which Mr. James now claims was built?

A. No, about 1905 there was a gridiron built there, I know that much.

Q. Do you recollect any difference in appearance between that gridiron that you saw there in 1905 and the one which Mr. James is now occupying? [493—453] A. I think it is a little bigger than it was.

Q. What have you to say with reference to its position on the ground?

A. About in the same position.

Q. Mr. Messerschmidt, do you know when the other approach to this gridiron was built? I mean the one toward the sawmill.

A. Eastely side—I think about 1909 or 1910.

Q. 1909 or 1910.

A. I think it was 1910, maybe 1911. It ain't very long since that old walk was built.

Q. What is the arrangement that you have with the Pacific Coast Company with reference to the purchase by you of one of these lots—lot 15 in Block 1 of the Pacific Coast Addition?

Mr. ROBERTSON.—We object to that as not the

(Testimony of Gustav H. Messerschmidt.)

best evidence. I presume he is referring to the instrument itself.

Mr. BAYLESS.—I am not referring to the instrument itself—I want to know what the arrangement is between Mr. Messerschmidt and the Pacific Coast Company.

Mr. ROBERTSON.—We object for the same reason and it is irrelevant, incompetent, and immaterial.

Q. (By the COURT.) Has that arrangement between you and the Pacific Coast Company been reduced to writing? A. Yes, it is in writing.

The COURT.—Very well—the writing is the best evidence.

Mr. BAYLESS.—All right. That is all.

Cross-examination.

(By Mr. ROBERTSON.)

Q. What was your business in 1900?

A. Bakery.

Q. You ran the bakery all the time?

A. Yes. [494—454]

Q. You spent quite a good deal of the time on the beach from 1900 up to this time?

A. Well, I deliver bread down there.

Q. Now, Gus, do you think your recollection is pretty clear at this time on what has taken place on that particular piece of ground from 1900 up to the present time? A. Yes, pretty clear.

Q. And you think at this time you can state positively just what has taken place during the various years on that piece of tide lands?

(Testimony of Gustav H. Messerschmidt.)

A. Well, just what I have noticed. There might have been lots of things I haven't seen, but I noticed what I stated.

Q. You said, I believe, that the wood which you brought in there was put in behind the gridiron, was it not?

A. There was no gridiron when I had wood there.

Q. But it was put in behind where the present gridiron is now? A. Yes.

Q. Do you mean towards the sea or towards the street? A. Towards the street.

Q. You are positive of that? That is your recollection at this time. You are just as positive of that as you are of any other fact that you have testified to, that the wood stood closer to the street than the present gridiron?

A. Well, there was no street at that time.

Q. But it stood closer to where the present street is? A. Yes.

Q. Then if you testified on the preliminary hearing that the wood was in front of the gridiron, you were mistaken?

A. Well, I don't know—in front of the gridiron—it depends upon which way you approach the gridiron.

Q. Well, you said behind here to-day.

A. Well, if you come from the water it is in front and from the other side it is behind—that is the way to figure it. [495—455]

Q. Which way were you coming in the preliminary hearing, do you remember? If you stated right in

(Testimony of Gustav Messerschmidt.)

front at the preliminary hearing, which way do you mean you were coming? Anyhow, in one of those statements you were incorrect—it was either in front or behind and couldn't be both—which one was it?

Mr. BAYLESS.—We object to that as argumentative.

The COURT.—Yes, it is slightly argumentative.

Q. (By Mr. ROBERTSON.) Well, now, Gus, in 1900 you had two cords of wood there?

A. A few cords.

Q. Well, about how many?

A. Four or five cords.

Q. And how many cords did you burn a week in your bakery?

A. Oh, about two or three cords—it just depends.

Q. And you had about how many, did you say, on the beach?

A. Five cords or something like that.

Q. Five on the beach? A. Yes.

Q. That you were using in your bakery?

A. Yes.

Q. Did you use wood that summer in the bakery?

A. Yes.

Q. As soon as you got it on the beach, did you commence using it? A. Not right away.

Q. How long did it lie there?

A. I couldn't tell you exactly. It had to be seasoned first to burn.

Q. You went down pretty frequently to see that nobody stole it? A. Exactly.

Q. How often did you go down?

(Testimony of Gustav Messerschmidt.)

A. About once a week.

Q. To see that nobody got those five cords of wood?

A. Yes. [496—456]

Q. Did you have anybody there to watch it?

A. No; I told several people to look out for it.

Q. You went down in the forenoon?

A. Yes, generally in the forenoon.

Q. Did you say you went always in the forenoon?

A. Most of the time, yes.

Q. Whereabouts did you put that wood with reference to line of mean high tide—did you put it on the beach or up on the upland where the water would not reach it?

A. Well, we had to get the first two rows before the June high tide comes.

Q. And what months did you put it there?

A. In the spring-time, March.

Q. I am talking about the first five cords now—not the forty-five cords, but the five cords.

A. The five cords, I couldn't tell exactly; it was built alongside the Indian's canoe there—he had a canoe and a shack back there, too.

Q. Did you put it on the tide land?

A. Just where the tide would reach it and then I had to watch it.

Q. And when you walked down that road, did you go down on high tide or low tide ordinarily?

A. Low tide.

Q. Well, then, Mr. Messerschmidt, did you say you always went down there at low tide?

(Testimony of Gustav Messerschmidt.)

A. Mostly at three-fourths. At extreme high tide you couldn't go.

Q. Did you see Mr. James there in 1900?

A. Not personally.

Q. Did you see Mr. James' scow there in 1900?

A. I seen a scow discharging those blocks; I couldn't tell whether it was Mr. James' scow or not, but Mr. James was doing the work.

Q. That was in the summer of 1900?

A. Yes. [497—457]

Q. How many times did you visit that beach altogether in 1900? A. I couldn't tell you exactly.

Q. Once? Did you go down there once?

A. You mean all summer?

Q. Yes. A. I went down there more than that.

Q. Twice? A. No, sir; more than that.

Q. Three times?

A. No,—maybe three dozen times.

Q. You always went down when the tide was low?

A. Yes.

Q. Now, Mr. Messerschmidt, what kind of a beach did you say was down there at that time?

A. Rough beach, same as any beach.

Q. Have you seen the beach lately? A. Yes.

Q. Was it in the same condition that it is now?

A. Yes, the same; there wasn't much difference.

Q. There was no driftwood or big boulders on it at that time?

A. Well, there were boulders on it perhaps as big as a spittoon laying all along the beach.

Q. How about driftwood?

(Testimony of Gustav Messerschmidt.)

A. There wasn't much driftwood.

Q. Well, was there any driftwood so that you took note of it?

A. No, not much; when it was, I put it on my wood-pile.

Q. You would pick it up and pile it on your wood-pile? A. Yes.

Q. Now, Mr. Messerschmidt, what was your idea of selecting that particular place to land wood at?

A. It was a good place to land.

Q. Why was it a good place to land? [498—458]

A. Well, I could get in easy.

Q. How—on account of what? Why could you get in easy—how do you mean it was easy to get in, that is what I want to know?

A. Further on there was Billy Layton and them fellows and I didn't want anything to do with them, so I went in there.

Q. You went in because this beach was open and vacant?

A. Yes, and I got permission to go in there.

Q. Did you get permission before or after you went in?

A. The Indian had already piled it in there when I bought it.

Q. You bought it from the Indian? A. Yes.

Q. That was the first five cords?

A. That was in the year 1900.

Q. Then you didn't bring that wood up from Sheep Creek? A. That was later on.

Q. You only had 5 cords in the year 1900?

(Testimony of Gustav Messerschmidt.)

A. Yes.

Q. And you bought that on the beach? A. Yes.

Q. Did you notice the beach particularly that year?

A. Well, it looked to me to be a good place to use as a permanent wood place.

Q. You thought it was a good place? A. Yes.

Q. Well, now, Mr. Hart—after that five cords was bought you went and told him it was yours?

A. Yes, that I had bought it.

Q. Mr. Messerschmidt, if you said in your testimony in the preliminary examination that you had this conversation with Hart about the forty-five cords of wood, you are really mistaken at this time? [499—459]

A. I am not mistaken; there is nothing mistaken.

Q. I say: If you said in your preliminary examination that you had forty-five cords of wood in there at the time you had this conversation with Mr. Hart and you now say it was five cords of wood from the Indian, you were either mistaken then or are now?

A. If I am correct, I never mentioned Mr. Hart in my preliminary at all.

Q. But you mentioned about the forty-five cords, didn't you? A. Yes.

Q. Did you have two conversations?

A. Yes, when Mr. Dautrick was here too.

Q. I want to know if you had conversations on different occasions? A. Yes.

Q. And practically the same thing occurred?

A. Yes.

(Testimony of Gustav Messerschmidt.)

Q. How did you happen to bring the forty-five cords of wood in there?

A. Well, cut the logs on the mountain-side between here and Sheep Creek and rolled them down on the ice and raft them in and I wasn't there on the beach—

Q. Why did you pick out that particular beach—there is a lot of land along there, isn't there?

Mr. BAYLESS.—Object to that as argumentative.
The COURT.—Objection overruled.

A. Well, Mr. Dautrick had given me permission to use it.

Mr. BAYLESS.—We move to strike that as not responsive.

The COURT.—Yes, that may be stricken.

Q. (By Mr. ROBERTSON.) What I want to know is this—whether or not it was on account of the beach looking better to you that you picked that particular piece of beach, and just why it was you took that particular piece of beach instead of taking a piece of beach this way a little farther or down a little farther? I am [500—460] trying to get your reason for going into this particular spot?

A. Well, as you can see, there is a little knoll in there and it gives you a little more ground.

Q. Kind of a little bight?

A. Yes, above high-water mark.

Q. You noticed this bight and noticed the beach was freer of rocks and driftwood; is that not the reason you went in there?

A. No, I didn't have a raft in there, I didn't care.

Q. How many times did you go down there in 1901,

(Testimony of Gustav Messerschmidt.)

Mr. Messerschmidt? A. About once a week.

Q. And what time of day did you generally go?

A. Forenoon.

Q. You always went in the forenoon once a week?

A. Yes.

Q. What day of the week?

A. I couldn't tell you exactly that.

Q. But you remember you always went in the forenoon? A. Yes.

Q. And you say you went, as I understood it, at low tide? A. Half tide, low tide.

Q. But you always went in the forenoon?

A. Yes.

Q. You are positive of that?

A. Oh, once or twice in the afternoon, but as a rule in the afternoons I am in the shop.

Q. Well, can you say positively you always went in the forenoon?

A. Well, I couldn't say that exactly, positively.

Q. Well, how many times didn't you go in the forenoon? A. Well, I didn't count it.

Q. But you went in the forenoon regardless of what the stage of the tide was; is that the idea?

A. Well, when a fellow has got to go through—half tide you can [501—461] go through, three-quarters you can go, but full tide it was hard to go down.

Q. Then, as I understand, if on Monday there happened to be a full tide in the forenoon, you waited until the latter part of the week when it was half tide or low tide?

A. Yes; most of the time went down on low tide.

(Testimony of Gustav Messerschmidt.)

Q. You think you were down there about forty times in 1901? A. Yes.

Q. That would be once a week for every week in the year except twelve weeks that you were down on that beach summer and winter?

A. No, during the summer I went down there because I wouldn't have wood and I was getting short of wood and I watched them all along the beach to see whether somebody brought in wood.

Q. I thought you were delivering bread?

A. Yes, and looking for wood too.

Q. Who did you deliver bread to down there in those days? A. Oh, some bachelors.

Q. Well, how long did that forty-five cords last you at the rate of three cords of wood that you burned in your bakery?

A. I couldn't tell you, because I bought some out here from a man—bought a load at two places.

Q. You had some wood out here also?

A. Yes, and sometimes I would take from down here and sometimes down there.

Q. So you don't know how long it lasted?

A. Oh, perhaps, I think a year—perhaps a year and a half. I could tell you if I had my book here.

Q. What I am trying to get at is this, the number of times you visited the beach so as to find out whether you had occasion to see Mr. James down there? A. I can't tell you that.

Q. You don't mean to say that there weren't a great many times that [502—462] Mr. James might be landing scows and you not have seen him?

(Testimony of Gustav Messerschmidt.)

What I mean is: Do you mean to say that the only times that Mr. James had any rafts on that beach were the few times you saw him yourself?

A. No, I don't mean to say that.

Q. You mean that those were the occasions you saw him? A. I saw him, exactly.

Q. And he may have been there a good many times that you weren't present; is that your idea—what you mean?

A. He might have been there that I didn't know about; I didn't keep tab on him.

Q. Mr. James didn't ask permission of you to use this land? A. No.

Q. When you saw Mr. James bring those scows in there, you didn't run over to Mr. James, did you, and say: "Here, I have got authority to use this land—you keep off of here"? A. No, sir.

Q. You didn't say anything to him?

A. No, sir.

Q. You say the first structure was put on that beach in what year?

A. As good as I can recollect in 1905.

Q. Was there anything on the beach before 1905?

A. Not that I remember.

Q. Were there two piles there?

A. There were some other two piles.

Q. Were there two piles about in the middle of this piece of land in the year 1904?

A. Well, I don't know whether there were piles in the middle of this piece of land; I know there were posts setting out.

(Testimony of Gustav Messerschmidt.)

Q. You say positively that there were no posts there?

A. Not where the gridiron is—further out in the water.

Q. If Mr. Webster testified positively in this case that he drove [503—463] two piles for Mr. James there in the summer of 1904, would you be willing to swear positively that Mr. Webster was mistaken?

A. Well, I didn't pay any attention to those two piles.

Q. You didn't, as a matter of fact, pay close attention to that beach? A. No, just what I saw.

Q. Just what you saw, but you didn't pay particular attention to it?

A. After I got off with the wood, I didn't pay particular attention to it.

Q. And you don't want to say at this time, Mr. Messerschmidt, that if any of your statements contradict sworn statements of the other men in this case, that they are mistaken and you are correct, do you? A. Well, I couldn't answer to that.

Q. Well, what year was the first structure put on that beach, did you say?

A. As good as I can recollect, in 1905.

Q. Was there one structure or two structures on there in the summer of 1905?

A. I think there were three logs with braces on and—

Q. Was there just one structure or two structures in 1905? A. One.

Q. You are positive of that?

(Testimony of Gustav Messerschmidt.)

A. One structure in 1905; that is as good as I can recall.

Q. Well, but do you know whether there was one or more than one?

A. There was one, one gridiron.

Q. You will swear there was one gridiron?

A. Yes.

Q. Was there one platform besides one gridiron?

A. I don't think it was in 1905; it was built later.

Q. Just one gridiron and one platform?

A. That is as good as I recollect. [504—464]

Q. What part of the beach was that gridiron on?

A. Right where the present gridiron is, in the same spot.

Q. Who used that gridiron—who did you see using it?

A. That lumber that came over from Wrangell.

Q. Did you actually see that with your own eyes?

A. Yes.

Q. Now, Mr. Messerschmidt, if Mr. Webster and Mr. James and Frank Bach have already testified positively that there was a little platform and a little gridiron on that beach in the year 1905, do you want to say at this time that they are mistaken, and you are correct?

Mr. BAYLESS.—Object to that as being argumentative.

The COURT.—Objection sustained.

Q. (By Mr. ROBERTSON.) What year was the road put through, Mr. Messerschmidt—I mean the plank road on down to the Jorgenson sawmill?

(Testimony of Gustav Messerschmidt.)

A. I think it was '6 or '7; I couldn't tell you exactly.

Q. Was the gridiron built there before that or after that?

A. The gridiron was there before the road was there.

Q. At any time after 1900 did Mr. James deliver you some lumber brought in over this tide land?

A. To me.

Q. Yes. A. No.

Q. You are positive of that?

A. Yes—not to me.

Q. You say you think the road was built in 1907?

A. I think in 1906 or 1907.

Q. And you say the gridiron was built before or after—I didn't catch your answer?

A. The gridiron was built before.

Q. This same gridiron that is in place there now?
[505—465]

A. Well, it looked like it just the same, I don't know; it might have been taken out and put in again, the same stuff, but it looks a little bigger, just like put another post onto it; that is how it appears to me.

Q. Mr. Messerschmidt, have you since that time—since you discontinued the use of where you had your cordwood down there, kept close watch and supervision over this piece of tide land; I mean have you given it especial attention?

A. Well, yes, I did, all of it down there.

Q. You have given that all especial attention?

(Testimony of Gustav Messerschmidt.)

A. Yes; I was looking for a piece to buy and put a float on to get my wood in.

Q. How long have you been looking for that?

A. Oh, for several years.

Q. Why didn't you buy this particular beach?

A. Well, I didn't think it was for sale.

Q. Why didn't you think so, Mr. Messerschmidt?

Mr. BAYLESS.—I object to that as immaterial.

The COURT.—Objection sustained.

Q. (By Mr. ROBERTSON.) The last time you used this piece of beach land was in 1903, I understood you to say, Mr. Messerschmidt? A. Yes.

Q. Did you say the cordwood was put up above the line of high tide; that is, just so the tide washed up practically a foot, so to speak; is that what you mean? A. Yes.

Q. And that the cordwood was not put down where the water would flow over it?

A. Yes, we lost about eight cord of the Lemon Creek wood in June.

Q. This was some more wood you put there?

A. In 1903, yes.

Q. How many cords of wood did you have in 1903?
[506—466]

A. I think it was 1902, spring of 1902, had some from Lemon Creek.

Q. And it washed away?

A. Not all of it—six or eight cords.

Q. All of it washed away; that was done where the water came up? A. Yes.

Q. And after that you were very particular to put

(Testimony of Gustav Messerschmidt.)

the wood above the line of high tide?

A. Didn't set any more after that.

Q. You quit there in 1902?

A. Well, after that wood was used up we quit.

Q. But you said you just brought some wood from there in 1902? A. Yes.

Q. Was all that washed away?

A. No—about eight cords.

Q. Was that part of the forty-five cords?

A. No.

Q. Well, you said—you told us a while ago that you had only five cords on at one time and forty-five cords another time?

A. Yes, and in 1902 had that on from Lemon Creek?

Q. Then you quit? A. Then I quit.

Q. What time did you get it used up?

A. I think it must have been the fall of that year, or spring of the next year.

Q. Which do you think—the fall of 1902?

A. I couldn't tell you that exactly.

Mr. ROBERTSON.—That is all.

Redirect Examination.

(By Mr. BAYLESS.)

Q. You have a contract with the Pacific Coast Company? A. I have. [507—467]

Mr. ROBERTSON.—Object to that and move to strike the answer on the ground that it is not proper redirect examination. I haven't brought out anything of that kind.

(Testimony of Gustav Messerschmidt.)

Mr. BAYLESS.—I should have introduced it in chief, your Honor.

Q. Where is that?

A. In the vault up at Behrends.

Q. Can you get it and bring it over and read it to the Court?

A. I believe I can. Which contract do you mean?

Q. Any and all contracts you have with the Pacific Coast Company.

(Witness excused.) [508—468]

[Testimony of A. S. Dautrick, for Plaintiff (in Rebuttal)].

A. S. DAUTRICK, a witness called and sworn in behalf of the plaintiff, testified in rebuttal as follows:

Direct Examination.

(By Mr. BAYLESS.)

Q. I believe you have been sworn? A. Yes, sir.

Q. You were the agent here from September, 1901, till September, 1903, for the Pacific Coast Company?

A. Yes, sir.

Q. Do you know who, if any one, occupied that—You know the property in controversy, of course?

A. Yes.

Q. Do you know who, if any one, occupied this piece of beach land during the time you were agent?

A. Yes.

Q. Just state who he or she was.

A. Gus Messerschmidt used it for a while for piling wood on the beach there; James used it for land-

(Testimony of A. S. Dautrick.)

ing rafts or scows of lumber, I think both, and people used it for tying up boats, fishing boats, there.

Mr. GUNNISON.—We object to the last part of the answer as not responsive—too general.

The COURT.—It seems to me that it is responsive—“Who used it?”—“James and Messerschmidt..”

Mr. GUNNISON.—Counsel asked who used it?

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception.

Q. (By Mr. BAYLESS.) Mr. Dautrick, are you sure that other persons besides Mr. James used this beach while you were agent?

Mr. GUNNISON.—We object to that on the ground that it is [509—469] leading, suggestive, argumentative, irrelevant, incompetent and immaterial.

The COURT.—Objection overruled.

A. I am.

Q. (By Mr. BAYLESS.) What have you to say with reference, then, to the possession of Mr. James as being exclusive?

Mr. GUNNISON.—We object to that as irrelevant, incompetent and immaterial, and as calling for a conclusion.

The COURT.—Objection overruled.

A. Why, I can't say that his possession was exclusive; I looked upon it as temporary possession such as other people were exercising there.

Mr. GUNNISON.—We move to strike the answer as not responsive.

(Testimony of A. S. Dautrick.)

The COURT.—That part of the answer that says “looked upon it as temporary” will be stricken, but the rest is allowed to stand.

Q. (By Mr. BAYLESS.) Do you know how much of the time Mr. James used that beach while you were agent? A. I do not.

Q. Do you know—how frequently did you have occasion to see him using this beach while you were the agent?

A. Not very often. I might see him in town a great many times, but I can't say I saw him on the beach very often, although I knew he was using it.

Mr. BAYLESS.—That is all.

Cross-examination.

(By Mr. GUNNISON.)

Q. You say you didn't see him on the beach very often though you knew he was using it?

A. Yes, sir. [510—470]

Q. And the only two persons who you are now able to name during the period of your agency are Mr. Messerschmidt and Mr. James?

A. Yes, sir, because the other ones were fishermen and Indians and temporary comers and goers, so I didn't get acquainted with them.

Q. How often did you visit that particular piece of ground during that time?

A. Not very often; I should say once a month.

Q. Thirty-six times in the three years?

A. I expect that is about as often as I was down there.

Mr. GUNNISON.—That is all.

(Testimony of A. S. Dautrick.)

Q. (By the COURT.) You say Mr. James used the beach? A. Yes, sir.

Q. Without any permission from the Pacific Coast Company?

A. I was instructed when I came here as agent that he had permission.

Mr. GUNNISON.—We move to strike that.

The COURT.—That will be stricken.

Q. You say that fishermen and men that have boats also tied up there and used it indiscriminately?

A. Yes, sir.

Q. Without any permission from the company?

A. Yes, sir.

Q. And you knew they were doing it?

A. Yes, sir.

The COURT.—That is all.

Redirect Examination.

(By Mr. BAYLESS.)

Q. Why was it you didn't object to these fishermen and others using this beach? [511—471]

Mr. GUNNISON.—We object to that as irrelevant, incompetent and immaterial.

The COURT.—Objection overruled; it is competent cross-examination on the question I asked.

A. Because so long as they were undertaking—taking no permanent occupation—the company had no objection; it was a matter of convenience.

Q. (By Mr. BAYLESS.) Why was it you didn't object to Mr. James occupying or using this beach while you were agent?

Mr. GUNNISON.—Same objection.

(Testimony of A. S. Dautrick.)

A. I can only say what I said to the Judge's question in regard to that.

The COURT.—If you didn't object on account of instructions you had, you may say so, but you need not say what those instructions were.

Q. (By Mr. BAYLESS.) If you had any instructions from the company with reference to Mr. James?

The COURT.—You can answer yes or no.

A. I had instructions.

Mr. BAYLESS.—Your Honor doesn't care to hear what those instructions were?

Mr. GUNNISON.—We object to the testimony of the witness with reference to his having had instructions and move to strike it on the ground that it is irrelevant, incompetent and immaterial, hearsay, and a self-serving declaration.

The COURT.—Objection overruled and the motion will be denied.

Mr. GUNNISON.—Exception.

Mr. BAYLESS.—That is all.

(Witness excused.) [512—472]

Mr. BAYLESS.—If the Court please, I would like to ask Mr. Dautrick a question and I will indicate what that question is at this time and state what I expect to prove. I would like to ask Mr. Dautrick if the reason for his not disturbing Mr. James was not on account of the fact of the company doing business with Mr. James and for that reason did not want to disturb him as long as he put no permanent improvements on the property and, in view of what

(Testimony of A. S. Dautrick.)

has transpired before, the Court is liable to be confused and take it for granted that the company did not disturb Mr. James because they thought Mr. James had a right to be there, or else that they had abandoned the property, and, in order to clear up that phase of the case, I would like to show the reasons why the company did not disturb Mr. James.

The COURT.—Is there any objection?

Mr. GUNNISON.—There is, sir. We object on the ground that it is incompetent, irrelevant and immaterial, and cannot in any way be binding on this defendant, and it isn't sufficient reason for failure to remove a person from ground that they claimed belongs to them, is self-serving, calls for a conclusion of the witness, and is hearsay.

The COURT.—What have you got to say to that, Mr. Bayless?

Mr. BAYLESS.—I think it is pertinent if the company did not disturb Mr. James while he was occasionally using this ground for the purpose of landing lumber on account of doing business with Mr. James and on account of their being disposed to permit him to use the ground provided there were no permanent improvements. It would indicate that the company had not abandoned the ground, as has been attempted to be shown.

The COURT.—If Mr. James acquired any rights by what he says he did, does he have any less right because the company considered that it was more to their advantage to let him stay there than to remove him and lose his business? Suppose I am [513—

(Testimony of A. S. Dautrick.)

473] doing business with you and getting some profit from it, but, notwithstanding the fact that I am doing business with you, I am occupying some of your property, occupying under a claim of right. Now, in order to get my business and not make any hostile feeling, you don't say anything about my occupying your property?

Mr. BAYLESS.—The Court misunderstands me—perhaps I haven't stated my position right. We propose to show that the company had no notice of Mr. James' adverse claim at that time and that the reason they permitted him to occupy the beach there was because they were doing business with him and he was not making any permanent improvements at that time.

Mr. GUNNISON.—Our objection goes to that and goes further that he continued to use it from that time up to the time this action commenced, and, from the testimony of witnesses already in the case, even from the plaintiff, it appears that they knew he was there and using permanent structures upon that beach.

Mr. BAYLESS.—I only propose to have Mr. Dautrick testify as to what transpired while he was here as agent.

The COURT.—Anything that you can bring home to Mr. James is competent, but the mental processes or the weighing of advantages or disadvantages that went on in Mr. Dautrick's mind, or the minds of the company, as to which it was more to their advantage to do, is a thing I don't think would be competent.

(Testimony of A. S. Dautrick.)

A. S. DAUTRICK, a witness sworn and recalled in behalf of the plaintiff, testified in rebuttal as follows:

Direct Examination.

(By Mr. BAYLESS.)

Q. I will ask Mr. Dautrick this question: While you were agent [514—474] were you aware of any claim of ownership by Mr. James adverse to the company?

Mr. GUNNISON.—We object to that question on the ground that it is irrelevant, incompetent, and immaterial.

The COURT.—Objection overruled.

A. No, sir.

Mr. BAYLESS.—Your Honor will not permit me to ask the other question?

The COURT.—Not the way you make your offer.

Mr. BAYLESS.—Would your Honor indicate what sort of a question would be agreeable?

The COURT.—Well, there wouldn't be any question agreeable on that line to develop the things that come within your view of the case.

Q. (By Mr. BAYLESS.) Mr. Dautrick, was Mr. James attempting to make any permanent improvements on the ground while you were agent?

A. No, sir.

Q. Well, why was it that you didn't disturb Mr. James or prevent him from landing lumber upon the beach while you were agent?

Mr. GUNNISON.—That is objected to on the ground that it is irrelevant, incompetent, and imma-

(Testimony of A. S. Dautrick.)

terial. He calls now for a reason, some process—the operation of this witness' mind why he didn't do a thing. It calls for a conclusion we think.

Mr. BAYLESS.—I don't think that is the same mental process your Honor had reference to.

Mr. GUNNISON.—I understand it isn't, but it is another one.

The COURT.—Well, of course, this is not a jury case. I might let him state and bring that out. I can think about it afterwards.

Mr. GUNNISON.—He has already asked that question. [515—475]

The COURT.—It reads differently, Judge Gunnison.

Mr. GUNNISON.—Exception.

The COURT.—I have no intention of permitting Mr. Dautrick to give anything about the private business arrangements between the company and Mr. James. Now, if you have any other reason, I will permit you to answer it.

A. Because so long as he made no permanent improvements, there was no objection to it so far as the company looked at it, or I as agent—so long as he was not undertaking to occupy it permanently, because other people were occupying it temporarily as well.

Mr. GUNNISON.—Just a moment. In order to save our record, we move to strike it on the ground that it is irrelevant, incompetent, and immaterial, that *that* it is a self-serving declaration and not binding on the defendant.

(Testimony of A. S. Dautrick.)

The COURT.—Motion denied.

Q. (By Mr. BAYLESS.) Mr. Dautrick, was the piece of ground which Mr. James was using while you were agent claimed by the Pacific Coast Company?

Mr. GUNNISON.—We object to that question as irrelevant, incompetent, and immaterial, and not the best evidence; that it is not rebuttal and is too indefinite as to time.

The COURT.—It is not rebuttal.

Cross-examination.

(By Mr. GUNNISON.)

Q. Had you any reason to think that Mr. James was going to give that ground up, Mr. Dautrick?

A. I had no reason to think that it belonged to Mr. James or that he was undertaking to hold it.

Q. You had no reason to think so—you had no arrangement with Mr. James personally about the use of it? [516—476]

A. I had not personally, no, sir.

Q. For how long a period did he use that?

A. He used it off and on all the time I was agent.

Q. What do you mean by off and on?

A. I mean he didn't use it every day; as I remember, he would bring a raft or scow over when he had it sold on this side and discharge it there.

Q. But you didn't go down there but once a month?

A. I say I didn't. I know he didn't use it every day.

Q. How do you know?

(Testimony of A. S. Dautrick.)

A. Because, while I wasn't down to that piece of ground, I was down to the old Union Dock frequently and could see it and I know the common business conditions were such that he couldn't use it every day.

Q. How frequently did he use it?

A. That I don't know.

Q. Once a week?

A. It would be very foolish if I stated, because I don't know.

Q. Then whenever he had business he would use it?

A. That is it exactly.

Q. And simply because he didn't put structures there, you permitted him to continue to use it?

A. Just as we did with other people, Messerschmidt and others.

Q. And the others you are not able to name now?

A. Yes, sir.

Mr. GUNNISON.—That is all

(Witness excused.) [517—477]

[Testimony of Gustav H. Messerschmidt, for Plaintiff (Recalled in Rebuttal).]

GUSTAV H. MESSERSCHMIDT, a witness sworn and recalled in behalf of the plaintiff, testified in rebuttal as follows:

Direct Examination.

(By Mr. BAYLESS.)

Q. Mr. Messerschmidt, I hand you a paper and ask you to tell the Court what it is.

A. That is a contract between myself and the Pacific Coast Company.

(Testimony of Gustav Messerschmidt.)

Q. This is an original contract, is it?

A. Yes, it is an original contract.

Q. Is that your signature? (Indicating.)

A. Yes, sir.

Mr. BAYLESS.—We offer this in evidence.

Mr. GUNNISON.—May I ask a question, your Honor?

The COURT.—Proceed.

Q. (By Mr. GUNNISON.) Was this executed on the day it bears date? A. How do you mean?

Q. On the day it is dated. A. Certainly.

Q. And on that day there was also the deed which was put in evidence executed from the Pacific Coast Company to you?

The COURT.—Q. Which is this contract for— which lot, the inside or outside?

A. Lot fourteen.

Q. (By Mr. GUNNISON.) Where is that, on the inside?

A. On the easterly side I think it is, lot fourteen— this one here. This is a corner lot in here. (Indicating.)

Q. You had a deed for that?

A. Contract; this one I have a deed.

Q. But this one is a deed, isn't it?

A. This is a contract for a deed—not really a deed.

[518—478]

Q. There was an agreement for the deed executed at the same time it was?

A. Yes, something like that.

Q. For this particular lot? A. Yes.

(Testimony of Gustav Messerschmidt.)

Mr. GUNNISON.—We object on the ground that it is irrelevant, incompetent, and immaterial; that this is an agreement between the witness and the Pacific Coast Company, is not binding upon the defendant in this case in any way, and is not rebuttal of anything.

Mr. BAYLESS.—If the Court please, it is a circumstance which goes to show that the plaintiff has not divested itself of title to the property in dispute.

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception.

Mr. BAYLESS.—I ask the privilege of reading this into the record. Q. This agreement is in escrow with Behrrends?

A. He got it in the vault.

Mr. BAYLESS.—I would ask the privilege of reading it in the record.

Mr. GUNNISON.—We object.

The COURT.—I think you are quibbling over something that is not very important—the thing is to get it before the party that is passing on the question. What difference does it make whether it is marked or read in the record?

(Mr. BAYLESS, reading:) THIS AGREEMENT, made this 13th day of August, 1913, between the Pacific Coast Company, a corporation, the party of the first part, and G. H. Messerschmidt, the party of the second part, WITNESSETH:

WHEREAS, the second party has this day purchased from the first party that certain lot number 14 in Block 1 in the Pacific Coast Addition to the

(Testimony of Gustav Messerschmidt.)

Town of Juneau, Alaska, according to the plat thereof, and whereas said lot is being conveyed to [519—479] the said party of the second part by an agreement for a deed executed contemporaneously with this contract, and whereas certain portions of said lot are now in the use and possession of others who claim the right of possession as against the party of the first part, which right the party of the first part denies:

NOW, THEREFORE, it is agreed that the party of the second part shall pay fifteen hundred dollars (\$1,500), being one-half of the purchase price of said lot, the total price being three thousand dollars (\$3,000), for which deed of conveyance will be executed without warranty as to the possession or rights of other parties to the said lot, which said deed is executed contemporaneously with this contract. And the party of the first part agrees to place the said party of the second part in possession of said lot within six (6) months of this date, or so much of the same as is not now in the possession of other parties, and it is further agreed that if the party of the second part has any difficulty with any person or persons whatsoever in securing such possession or enter into the possession of the entire lot and occupying the same, whether such other parties claim title or not, then, and in that event, the party of the first part will return to the party of the second part the purchase price of the said lot, or so much thereof as has been paid, and the party of the second part will surrender, upon the return of said purchase price,

(Testimony of Gustav Messerschmidt.)

his possession to the party of the first part and deliver the deeds conveying title back to the party of the first part, deeds of conveyance to be of equal dignity with the deeds of conveyance hereby made by the party of the first part to the party of the second part; AND IT IS FURTHER AGREED, that, as soon as the party of the second part secures entire possession of the property herein described, he shall pay the remaining fifteen hundred dollars (\$1,500) due hereunder. [520—480]

IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

THE PACIFIC COAST COMPANY,

By S. H. EWING,

Its Agent. [Seal]

G. H. MESSERSCHMIDT. [Seal]

Signed and sealed in the presence of:

WILLIAM S. BAYLESS.

S. HELLENTHAL.

United States of America,
District of Alaska,—ss.

This is to certify that on this 26th day of August, 1913, before me, the undersigned, a notary public in and for the District of Alaska, personally appeared S. H. Ewing, personally known to me to be the same person whose name is subscribed to the within instrument as the attorney in fact of the Pacific Coast Company, a new Jersey corporation, and the said H. S. Ewing acknowledged to me that he subscribed the name of the said The Pacific Coast Company hereto

(Testimony of Gustav Messerschmidt.)

as principal, and his own name as attorney in fact, freely and voluntarily as the free and voluntary act of the said The Pacific Coast Company for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal in this certificate the day first above written.

[Seal]

W. S. BAYLESS,

Notary Public for Alaska.

Commission expires December 10, 1913.

The COURT.—Now, let the clerk mark it, so it can be identified at any time.

(Admitted in evidence and marked “Plaintiff’s Ex. 24.”) [521—481]

Q. (By Mr. BAYLESS.) Mr. Messerschmidt, do you know whether or not the Pacific Coast Company has paid taxes on this lot for the last two years?

A. They have.

Mr. GUNNISON.—We object to that as not being the best evidence—from Mr. Messerschmidt, the party that apparently under that, according to Mr. Bayless’ contention, has no interest in this ground except a contract for a deed.

The COURT.—The question is: “Mr. Messerschmidt, do you know whether the company paid the taxes”? That is the question—“Do you know.” Objection overruled.

Mr. GUNNISON.—We move to strike the answer.

The COURT.—Very well. The question is “Do you know if the Pacific Coast Company has paid taxes for the last two years.”

(Testimony of Gustav Messerschmidt.)

Mr. GUNNISON.—We object to the question as incompetent, irrelevant, and immaterial—it doesn't matter.

Q. (By Mr. BAYLESS.) Do you know who paid the taxes for 1913 on it?

A. The Pacific Coast Company.

Mr. GUNNISON.—We move to strike.

The COURT.—Yes, strike that.

Q. (By Mr. Bayless.) Do you know who paid the taxes on it for 1913?

The COURT.—Say yes or no.

A. Yes, I know.

Q. (By Mr. BAYLESS.) Did you pay the taxes on it? A. I paid on one lot.

Q. Did the Pacific Coast Company refund it to you?

Mr. GUNNISON.—We object to that as irrelevant, incompetent, and immaterial,—no matter what the Pacific Coast Company refunded.

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception. And calling for a conclusion [522—482] of the witness as to what they did.

The COURT.—What is the conclusion, Judge Gunnison?

The question is: "Did they refund to him what he paid out." Where is the conclusion?

Mr. GUNNISON.—If that is the question, that is a different proposition, but counsel asked him if they refunded the taxes.

The COURT.—Where is the conclusion in that?

(Testimony of Gustav Messerschmidt.)

Mr. GUNNISON.—It might be a question of law whether they were refunding taxes or not—might have been something else or not.

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception.

Q. (By Mr. BAYLESS.) Did they refund you the money you paid for taxes last year? A. Yes, sir.

Mr. BAYLESS.—That is all.

Cross-examination.

(By Mr. ROBERTSON.)

Q. When did they refund you the taxes?

A. Oh, I don't know; a couple of months later after I had them paid.

Q. Where is the deed, Mr. Messerschmidt, that is referred to in here as having been made on the same day as this? A. Right here.

Q. Did they refund the taxes after the fifteenth day of August, 1913, or before? A. After.

Q. Did you get this deed at the same time you got that contract? A. Yes, them two together.

Q. What day did you get this contract, Mr. Messerschmidt, on August 13th, which is the date in there, or on the date it appears in [523—483] here, August 26th, that you went before Mr. Bayless, Notary Public?

A. Well, I couldn't tell you exactly which date it was.

Q. Well, was it on August 13th or August 26th, 1913? A. I couldn't tell you.

Q. Was it after or before August 15, 1913?

(Testimony of Gustav Messerschmidt.)

A. I couldn't tell you; I know it was in August some time.

Q. Did you pay that fifteen hundred dollars?

A. Yes, sir.

Q. Have you got it back? A. No, sir.

Q. You paid the fifteen hundred dollars to whom?

A. To the Pacific Coast Company.

Q. To Mr. Ewing as agent?

A. To Forrest and Ewing.

Q. Did the Pacific Coast people put you in possession of that ground as they said they would within six months of the date of this instrument?

Mr. BAYLESS.—Object to that as incompetent.

Mr. ROBERTSON.—It calls for the full deed as soon as they do.

Mr. BAYLESS.—You want him to construe it.

The COURT.—It is not proper cross-examination.

Q. (By Mr. ROBERTSON.) Did you pay the balance, fifteen hundred dollars?

Mr. BAYLESS.—Object to that.

The COURT.—Objection sustained.

Q. (By Mr. ROBERTSON.) What has been done under that contract, Mr. Messerschmidt?

Mr. BAYLESS.—Object to that as not competent.

Mr. ROBERTSON.—I call your attention to the fact that the date of the certificate was on the date this action was started.

The COURT.—Objection sustained. [524—484]

Q. (By Mr. ROBERTSON.) Was that the day—I will withdraw that—did you have any nego-

(Testimony of Gustav Messerschmidt.)

tiations with the Pacific Coast people before the 15th day of August, 1913, regarding buying that lot?

A. I had.

Mr. ROBERTSON.—That is all.

Redirect Examination.

(By Mr. BAYLESS.)

Q. Your negotiations were closed before this suit was brought? A. Oh, yes.

Q. (By the COURT.) They say in here, Mr. Messerschmidt, that a deed is issued contemporaneously with this contract; where is that deed—was that ever executed?

A. It is a contract for a deed.

Q. I call your attention—it says: “which said deed is issued contemporaneously with this contract”; where is that other deed?

A. I couldn't tell you.

Q. Did you get any paper that connected—did you get any paper from the Pacific Coast Company on the 26th or 13th day of August last year besides this contract? A. No.

Q. You didn't get any deed? A. No.

(Witness excused.) [525—485]

**[Testimony of Charles E. Davidson, for Plaintiff
(in Rebuttal)].**

CHARLES E. DAVIDSON, a witness called and sworn in behalf of the plaintiff, testified in rebuttal as follows:

Direct Examination.

(By Mr. BAYLESS.)

Q. Please state your name.

(Testimony of Charles E. Davidson.)

A. Charles E. Davidson.

Q. And your residence? A. Juneau.

Q. And your occupation?

A. Surveyor-general for Alaska.

Q. Mr. Davidson, when did you first come to Juneau? A. 1896.

Q. Well, have you resided here continuously since 1896? A. No.

Q. Well, will you account for your time since 1896 to date?

A. As near as I can. I lived here until 1908 most of the time—this was my headquarters till 1908—and then I went to Fairbanks and lived in Fairbanks until last fall.

Q. Did you have anything to do with the Wrangell sawmill in 1905? A. Yes.

Q. What was it?

A. I was receiver for the Wrangell sawmill.

Q. Receiver for the Willson-Sylvester estate?

A. Receiver for the Willson-Sylvester estate, yes, sir.

Q. In 1905 did you have any negotiations with the Pacific Coast Company with reference to a piece of property here in Juneau? A. Yes.

Mr. GUNNISON.—We object on the ground that it is irrelevant, incompetent and immaterial, and if the negotiations were in a contract, the contract is the best evidence. [526—486]

Mr. BAYLESS.—If you will give me an opportunity, I will do more than ask the ordinary questions.

(Testimony of Charles E. Davidson.)

The COURT.—I cannot see how it is rebuttal. What does it rebut?

Mr. BAYLESS.—I am going to ask him whether this was merged in a written contract.

The COURT.—What does that rebut?

Mr. BAYLESS.—That is preliminary as to whether or not he used some land under that contract.

The COURT.—What does that rebut?

Mr. BAYLESS.—That will rebut Mr. James' assertion that he has been occupying this ground in controversy.

The COURT.—Mr. James admits that Davidson built a platform and used it.

Mr. BAYLESS.—During all that period?

The COURT.—During what period?

Mr. BAYLESS.—During the period the platform remained there.

The COURT.—Yes, that was admitted by Mr. James on the witness-stand.

Q. (By Mr. BAYLESS.) I would like to ask Mr. Davidson if he had exclusive possession of that platform erected by him.

Mr. GUNNISON.—We object to that as being irrelevant, incompetent and immaterial, calls for a conclusion and is not rebuttal.

The COURT.—Exclusive possession of the platform?

Mr. BAYLESS.—What his possession consisted of. I will not ask him if he had exclusive possession of it, but I will frame it so it will mean that.

(Testimony of Charles E. Davidson.)

The COURT.—Objection sustained.

Q. (By Mr. BAYLESS.) Mr. Davidson, pursuant to this contract between yourself and the Pacific Coast Company, did you build a platform [527—487] upon the ground in dispute in this case?

Mr. GUNNISON.—We object to that as being irrelevant, incompetent and immaterial, and not rebuttal.

The COURT.—Objection sustained.

Q. (By Mr. BAYLESS.) Mr. Davidson, do you know the ground in dispute in this case?

A. I think I do.

Q. Do you know where Mr. James' gridiron is now? A. Yes, I think I know where it is.

Q. Would you say that was in the same place or a different place than the platform which you erected?

A. Well, it is in the neighborhood of the same place I should say, as near as I remember.

Q. Is there any difference between the two structures, the one erected by you and the one erected by Mr. James?

A. You mean the two structures—I don't think they were the same structures. They are different structures.

Q. Do you know how long the structure erected by you remained on the ground?

A. No, I don't. It remained there for some time though.

Q. How long did you use that platform?

A. Well, we used it till the fall of 1905, along in

(Testimony of Charles E. Davidson.)

the fall. I don't know just what time.

Q. Did you use it at any time after the fall of 1905?

A. No, I don't think so. That is, as far as Willson-Sylvester were concerned.

Q. Did Mr. James give you permission to use this platform which was put up there?

Mr. GUNNISON.—Object to that as irrelevant, incompetent, immaterial, and not rebuttal.

The COURT.—What does this rebut? Did Mr. James testify that he did? [528—488]

Mr. BAYLESS.—Not that I know of.

The COURT.—What does it rebut?

Mr. BAYLESS.—It is a circumstance showing possession by Mr. Davidson adverse to Mr. James.

The COURT.—That may be true, but there is no testimony to the contrary. There is nothing to rebut on that proposition. There is no testimony and Mr. James didn't testify in any sense of the word that he gave Mr. Davidson permission to occupy it.

Mr. BAYLESS.—If this point is conceded, that Mr. Davidson's possession of the property in dispute during the summer of 1905 was adverse to Mr. James, I have no question to ask Mr. Davidson on that point. If your Honor understands that that is a fact.

Mr. GUNNISON.—We certainly don't concede that Mr. Davidson's possession was adverse to Mr. James.

The COURT.—Very well, I overrule the objection.

(Testimony of Charles E. Davidson.)

Mr. GUNNISON.—We still insist it isn't rebuttal.

The COURT.—I know, but your testimony is that his was exclusive.

Mr. GUNNISON.—Exception.

Q. (By Mr. BAYLESS.) Mr. Davidson, did you get permission from Mr. James to erect this platform?

Mr. GUNNISON.—We renew that objection on the further ground that the evidence of the plaintiff is—and of this witness—the evidence of the plaintiff is that he went there pursuant to a lease from the Pacific Coast Company.

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception.

A. No.

Q. (By Mr. BAYLESS.) You didn't get any permission from Mr. James? A. No.

Q. Did Mr. James interfere with your occupancy or use of that ground in any way?

A. No. [529—489]

Mr. GUNNISON.—We object to that as irrelevant, incompetent and immaterial, and not rebuttal.

The COURT.—Mr. James himself testified that he never interfered with him. I don't know why you are putting Mr. Davidson on to corroborate Mr. James. If there had been any testimony by the defense that they did interfere, I could see why you would put Mr. Davidson on the stand to say that they didn't.

Q. (By Mr. BAYLESS.) Was there any structure on that beach prior to the time you built the

(Testimony of Charles E. Davidson.)

gridiron or platform?

A. Where this gridiron was?

Q. Yes.

A. No, there was nothing there when I built this gridiron.

The COURT.—Q. When you built the platform—you didn't build the gridiron?

A. Well, no, it was the platform. It wasn't a gridiron.

Q. (By Mr. BAYLESS.) Was there a small gridiron in the vicinity of this platform?

A. I think there was, as I remember it; there was a gridiron there near that some place.

Q. Do you know who used that gridiron?

A. Well, my recollection is that he had on one side or the other; I am not quite clear which side.

Q. Do you know how close to the platform that little gridiron stood?

A. I couldn't say, but it wasn't very far from there as I remember it. This thing has kind of gone out of my mind, since 1905, but I know there was a little gridiron.

Q. Did you ever have occasion to use this little gridiron in landing any lumber from Wrangell?

A. No, I don't think so; I don't remember of it.

Q. Mr. Davidson, how much of the beach did you use or occupy during the summer of 1905?

A. I don't remember the length of that platform; it was probably [530—490] sixty or seventy feet, something like that—maybe a little longer, maybe not quite that long.

(Testimony of Charles E. Davidson.)

Q. Parallel with the beach? A. Yes.

Q. And about how wide?

A. Probably pretty nearly square.

Q. How close to the water was it, or was it in the water?

A. Well, the piling was out in the water when the tide was up; the whole thing was below the high tide.

Q. The whole platform was below high tide?

A. I mean where it was built, the water went above it.

Mr. GUNNISON.—Q. You mean surrounded it?

A. Yes.

Q. (By Mr. BAYLESS.) Do you know anything about that property prior to 1905?

A. Nothing particularly, only I have been up and down there and have seen it, but I don't know anything about who owns it any more than I supposed the Pacific Coast Company claimed it.

Mr. GUNNISON.—Move to strike that.

The COURT.—Motion granted.

Q. (By Mr. BAYLESS.) Do you know who claimed that property in 1905?

Mr. GUNNISON.—Same objection—irrelevant, incompetent and immaterial, and not rebuttal.

The COURT.—Objection sustained.

Q. (By Mr. BAYLESS.) Did you know in 1905 of any claim by Mr. James of any interest in that property adverse to the Pacific Coast Company?

Mr. GUNNISON.—Object to that as irrelevant, incompetent and immaterial, and not rebuttal.

Q. (By Mr. BAYLESS.) You were the lessee of

(Testimony of Charles E. Davidson.)

the Pacific Coast Company?

A. Yes. [531—491]

Q. Did you know any claim of Mr. James that was adverse to the Pacific Coast Company?

Mr. GUNNISON.—Same objection—and not binding on the defendant.

The COURT.—Objection overruled.

A. No, I didn't know of any.

Q. (By Mr. BAYLESS.) Did Mr. James do anything to indicate that he had any adverse claim to the Pacific Coast Company in 1905 while you were occupying the ground?

Mr. GUNNISON.—We object to that on the ground that it is irrelevant, incompetent and immaterial, and as calling for a conclusion of the witness.

The COURT.—The question is not rebuttal.

Mr. BAYLESS.—That is all.

Cross-examination.

(By Mr. GUNNISON.)

Q. Are you certain about the dimensions of that platform, Mr. Davidson? A. No.

Q. And you are giving it to the best of your recollection? A. To the best of my recollection.

Q. How long did you say you used that?

A. Well, I used it until the lumber was removed in the fall—lumber piled on there—and from time to time we brought scows of lumber and unloaded it.

Q. Do you remember how many scows of lumber you brought up?

A. Probably six or seven scow loads.

(Testimony of Charles E. Davidson.)

Q. Did you testify that you saw a small gridiron there? A. Yes. [532—492]

Q. Did you ever see Mr. James use that?

A. Yes, I think Mr. James used to land a scow there, if I remember.

Mr. GUNNISON.—That is all.

(Witness excused.) [533—493]

[Testimony of S. H. Ewing, for Plaintiff (Recalled in Rebuttal).]

S. H. EWING, a witness sworn and recalled by the plaintiff, testified in rebuttal as follows:

Direct Examination.

(By Mr. BAYLESS.)

Q. You have been sworn before, Mr. Ewing?

A. I have.

Q. Mr. Ewing, how long have you been agent of the company here? A. Since January, 1911.

Q. Do you know who has been using the piece of property in dispute in this case since you have been here? A. I do.

Q. Who has?

Mr. GUNNISON.—We object to that on the ground that it is irrelevant, incompetent and immaterial, not rebuttal, too general in character, and not confined to the time prior to the commencement of this action.

The COURT.—That was part of your case in chief, Mr. Bayless, it seems to me.

Mr. BAYLESS.—It is only preliminary.

Q. Has Mr. James been using this gridiron since

(Testimony of S. H. Ewing.)

you have been here up to the time this suit was begun?

Mr. GUNNISON.—We object on the ground that it is irrelevant, incompetent and immaterial, not rebuttal, already testified to by this witness in the case in chief.

The COURT.—This is a direct question to a witness to negative the testimony of Mr. James. Mr. James testified that he has been using it ever since. Here is a witness which he asks whether Mr. James has used it in the last year or so.

Mr. ROBERTSON.—We object to it because it is leading.

The COURT.—Very well, but that wasn't the objection Judge Gunnison made. It is leading—change the form. [534—494]

Q. (By Mr. BAYLESS.) Who has been occupying this ground since you have been up here up to the time the suit was begun?

A. The gridiron belonged to Mr. James.

Q. And Mr. James has been using the gridiron up to that time? A. As well as other people.

Mr. GUNNISON.—Q. This same gridiron?

A. This same gridiron.

Q. (By Mr. BAYLESS.) Do you know of anybody else using it besides Mr. James? A. I do.

Q. Who?

Mr. GUNNISON.—Same objection.

The COURT.—Objection overruled.

A. Peter Madsen for one with his gravel scows, or the Alaska-Juneau people for the material of the

(Testimony of S. H. Ewing.)

administration building, and at times some boats put on there for painting and so on.

Q. (By Mr. BAYLESS.) Mr. Ewing, when did you first become aware of the adverse claim of Mr. James to this property?

Mr. GUNNISON.—We object to that as irrelevant, incompetent and immaterial, not rebuttal, and already testified to by this witness in his case in chief.

The COURT.—I think so, Mr. Bayless.

Mr. BAYLESS.—I don't remember, if the Court please, of having asked him that question before.

Mr. GUNNISON.—It is my recollection that he did.

The COURT.—That is my recollection, but you may ask it.

Q. (By Mr. BAYLESS.) When did you first become aware of Mr. James' adverse claim?

A. Last year when he started to drive piles on the westerly end of it—the fact that it was claimed by him.

Q. You had never heard of his making a claim like that prior to that time? [535—495] A. No, sir.

Mr. GUNNISON.—We object to that as leading.

Mr. BAYLESS.—It is just a repetition, to save time.

The COURT.—He has already answered the question.

Q. (By Mr. BAYLESS.) You say Mr. James was using this gridiron when you first came here?

A. By scows of lumber from his sawmill across at Douglas.

(Testimony of S. H. Ewing.)

Q. Did you know at that time that he was making any adverse claim to the ground? A. I did not.

Mr. GUNNISON.—We object to that as being a repetition and leading.

The COURT.—Yes, that is a repetition and leading both.

Q. (By Mr. BAYLESS.) Why didn't you take some step to put him off?

Mr. GUNNISON.—Object to that on the ground that it is irrelevant, incompetent, and immaterial, and not the best evidence. It is the same question that was asked Mr. Dautrick and excluded.

The COURT.—And I let Mr. Dautrick answer it—the question as to why. You cannot go into any business relations between you and Mr. James, but anything in the character of occupation by Mr. James—

A. Upon instructions of my predecessor.

Mr. GUNNISON.—We move to strike it.

The COURT.—It will be stricken.

Q. (By Mr. BAYLESS.) Mr. Ewing, if Mr. James should drive the piles and make the improvements contemplated by him, what, if any, effect would it have upon the property of the company?

Mr. GUNNISON.—We object to that on the ground that it is irrelevant, incompetent, and immaterial, as calling for a conclusion of the witness, and was part of their case in chief and is not rebuttal.

The COURT.—I don't know about that, Judge Gunnison. [536—496]

Mr. GUNNISON.—Already gone into it, your Honor.

(Testimony of S. H. Ewing.)

The COURT.—Yes, but you must recollect that you have a case the same as the plaintiff.

Mr. GUNNISON.—That is true, your Honor.

The COURT.—Objection overruled.

Q. (By Mr. BAYLESS.) What, if any, effect would these improvements have upon the company's property?

A. You mean piling the tract in dispute by Mr. James?

Q. Yes.

A. Well, liable to disrupt their plans for their proposed new dock they are going to build.

Q. Well, I hand you a map and ask you to tell the Court just what Mr. James' activities would result in with reference to the plans of the company and the proposed improvements of the company.

Mr. GUNNISON.—We object to that on the ground that it is irrelevant, incompetent, and immaterial, not the best evidence of the proposed plans of the company, are not binding upon Mr. James, and not a defense in the action, and further that there is no testimony that he—well, I will withdraw that—

The COURT.—You withdraw your objection?

Mr. GUNNISON.—There is no testimony that he is going to pile. The testimony is that he is going to build a gridiron. Further, we object to the use of the map unless it is properly identified and put in evidence.

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception.

Q. (By Mr. BAYLESS.) Mr. Ewing, go ahead and answer that.

(Testimony of S. H. Ewing.)

A. It will do away with part of the proposed coal bunkers, cold-storage house and the easterly approach from Franklin Street onto the wharf.

Mr. GUNNISON.—We move to strike all that as not responsive to the question—irrelevant, incompetent, immaterial, and not [537—497] rebuttal.

The COURT.—Objection overruled and the motion will be denied.

Mr. GUNNISON.—And the further objection that the right to build out a wharf—the only right of the ownership to the upland or wharf site is of access to deep water, and that there is no evidence here that the acts of the defendant James would interfere with the access to this company to deep water over their claim or proposed wharf. On the contrary, the evidence is that they could use it with at least one vessel. They could have access to deep water for at least one vessel.

The COURT.—I don't understand that the claim of the plaintiff is based entirely on the claim of access. They also claim rights by virtue of occupation. Proceed.

Mr. GUNNISON.—Exception.

Q. (By Mr. BAYLESS.) Mr. Ewing, I will ask you what this map is—to identify it.

Mr. GUNNISON.—We desire to interpose the further objection to that, your Honor, that all the witness has testified to is that these were contemplated plans—purely speculation—that there is nothing definite about it, no work has been commenced upon it, and there is no evidence that they ever will

(Testimony of S. H. Ewing.)

go through with it; and, further than that, that the evidence is that a large tract of this—a portion of this ground has been sold and is under contract.

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception.

Q. (By Mr. BAYLESS.) Go ahead and tell what the map is.

A. This is a plan of the proposed new wharf on the old Carroll-Murray wharf site—includes a warehouse, cold storage, coal-house and approaches on either end from Franklin Street. [538—498]

Q. Does that map properly delineate the proposed improvements?

Mr. GUNNISON.—We object to that as irrelevant, incompetent, and immaterial. The witness hasn't qualified himself as being competent to testify on that subject.

The COURT.—Objection overruled.

A. It does.

Mr. BAYLESS.—We offer this in evidence as an illustration of the witness' testimony.

Mr. GUNNISON.—We object to the offer of the map on the ground that it hasn't been properly identified; that there is no testimony as to the accuracy of it, when it was prepared, or by whom, and that it is irrelevant, incompetent, and immaterial; and that there are already other maps in evidence that cover the same ground.

Mr. BAYLESS.—Show them to me, Judge.

The COURT.—Objection overruled.

(Admitted in evidence and marked "Plaintiff's Ex. No. 25.")

(Testimony of S. H. Ewing.)

Q. (By Mr. BAYLESS.) Mr. Ewing, is any portion of this new wharf built?

Mr. GUNNISON.—That is objected to unless it is on some portion of the ground in question. It might be built elsewhere and be immaterial.

The COURT.—Objection overruled.

A. The westerly approach is piled over and there are two rows of piles the length of the wharf site up to the row of piles that Mr. James drove last fall.

Q. (By Mr. BAYLESS.) Clear down to James'?

A. Yes; two rows of piles right down to where Mr. James drove piles last fall, and was enjoined—

Q. When is the rest going to be done?

Mr. GUNNISON.—We object to that on the ground that it is irrelevant, incompetent, and immaterial, and calls for a conclusion of the witness. [539—499]

The COURT.—Judge Gunnison, are you not asking for an injunction against these people to prevent them from piling over in front of you?

Mr. GUNNISON.—Yes, sir.

The COURT.—How is it going to hurt you if he proves that that is what they intend to do?

Mr. GUNNISON.—Well, I don't know as it will.

The COURT.—Very well—objection overruled.

A. As soon as the injunction is dissolved, that is, if the injunction is dissolved in our favor. That is the only reason the wharf hasn't been proceeded with.

Q. To the best of your knowledge? A. Yes.

Mr. BAYLESS.—We offer that in evidence.

(Testimony of S. H. Ewing.)

Mr. GUNNISON.—We object to the introduction of the map.

The COURT.—The map has been admitted ten minutes ago.

Cross-examination.

(By Mr. GUNNISON.)

Q. This additional work is to be done, Mr. Ewing, whenever the injunction against the company is raised? A. Yes, sir.

Q. That is, you mean work on this particular piece of ground in controversy?

A. The balance of the work and the easterly approach to the proposed wharf.

Q. On what do you base your information—your statement?

A. From instructions from my superior.

Q. From your superior officer?

A. Yes. [540—500]

Q. When was it you first heard of Mr. James' adverse claim?

A. It was the morning that he started in to drive piles.

Q. You never heard of his claiming it before that?

A. No, sir.

Q. You never talked to him about it before that?

A. Not to my knowledge.

Q. Didn't you go down there two or three months before that and order him off?

A. No; I went down there when Webster was driving some piles there by the gridiron and asked him what he was doing.

(Testimony of S. H. Ewing.)

Q. When was the Alaska-Juneau occupying this ground?

A. That was right—last winter, the latter part of last year.

Q. That was after this action was commenced?

A. Yes, sir, to the best of my knowledge.

Q. When was it Madsen occupied it?

A. Madsen—I seen him off and on for the last two years.

Q. Was that under permission from the Pacific Coast Company that Madsen was there?

A. No, sir.

Q. Do you know whether or not Madsen is there on a lease from Mr. James? A. I could not say.

Q. You knew the gridiron belonged to Mr. James?

A. So I was informed.

Q. How long have you known that?

A. Pretty near from the first day I took charge of this agency.

Q. And you know Mr. James has been using the ground all that time?

A. I have seen scows from the mill over in Douglas on there time and again.

Q. And the first time you ever heard of his adverse claim was about the time this action commenced?

A. That he claimed that ground, yes, sir. [541—501]

Q. Your knowledge of these proposed improvements is all received from your superior officer in the company? A. Yes, sir.

Mr. GUNNISON.—That is all.

(Testimony of S. H. Ewing.)

Q. (By the COURT.) Mr. Ewing, I call your attention to Plaintiff's Exhibit 25, to lots numbered fourteen and fifteen, and what is marked on here as a gridiron—I understand that your company, the plaintiff in the case, proposes and intends and will, unless restrained, build a wharf entirely closing in and shutting off lots 13 and 14 from deep water?

A. Thirteen, fourteen, and part of fifteen, yes, sir.

Q. That is the intention of the company—that is what they will do unless they are restrained?

A. Yes, sir.

The COURT.—Very well; that is all.

(Witness excused.)

(Whereupon Court adjourned until 9:30 A. M., July 22, 1914, when Court reconvened pursuant to adjournment.) [542—502]

[Testimony of P. L. Gemmett, for Plaintiff (in Rebuttal).]

P. L. GEMMETT, a witness called and sworn in behalf of the plaintiff, testified in rebuttal as follows:

Direct Examination.

(By Mr. BAYLESS.)

Q. State your name and residence.

A. P. L. Gemmett, Juneau.

Q. Mr. Gemmett, have you an arrangement to purchase some lots of the Pacific Coast Addition from the Pacific Coast Company?

Mr. GUNNISON.—We object to that on the ground that it is irrelevant, incompetent, and immaterial, and is not the best evidence.

The COURT.—What is that rebuttal of?

(Testimony of P. L. Gemmett.)

Mr. BAYLESS.—Why, Judge Gunnison attempted to show that we had dispossessed ourselves of all of our uplands.

Mr. GUNNISON.—We showed from one witness that the Pacific Coast Company had disposed of the uplands either by deed or by agreement.

A. I have a deed—contract for a deed.

The COURT.—Does this deed purport to show any disposal of the upland abutting on this property?

Mr. BAYLESS.—Yes, sir, we propose to show that Mr. Gemmett has a contract for part of the upland, but that we have not parted with the title as yet.

The COURT.—I think you ought to be allowed to show that.

A. Yes, sir.

Q. (By Mr. BAYLESS.) Has that arrangement been reduced to writing? A. Yes, sir.

Q. Have you the contracts with you?

A. Yes, sir. [543—503]

Q. Will you let me see them?

A. (Witness hands paper to counsel.)

Q. What is this first contract?

A. Contract for a deed.

Q. For what lot? A. Lot one, block three.

Q. Of the Pacific Coast Addition?

A. Of the Pacific Coast Addition, yes, sir.

Mr. GUNNISON.—We submit that that isn't a lot in controversy here—lot one in block three.

A. Yes, sir.

Mr. GUNNISON.—We submit that it is not in controversy. The only upland lots in controversy are two, three, and four, in block three.

(Testimony of P. L. Gemmett.)

Mr. BAYLESS.—I believe that is true, if the Court please. I will withdraw that and I have no objection to the objection being sustained.

Q. I will hand you this other contract and ask you what that is? A. Contract for a deed.

Q. For what lots? A. Lot two in block three.

Mr. GUNNISON.—We object on the ground that it is irrelevant, incompetent, immaterial, and not rebuttal.

The COURT.—Objection overruled.

Mr. GUNNISON.—Well, I will withdraw that.

Mr. BAYLESS.—We offer this agreement in evidence.

Mr. GUNNISON.—We object on the ground that it is irrelevant, incompetent, immaterial, and not rebuttal.

The COURT.—That is one of the upland lots—objection overruled.

Mr. BAYLESS.—Only a portion—the eastern portion abutting on it. [544—504]

Q. You have another contract, Mr. Gemmett?

A. Yes, sir.

Q. Between yourself and the Pacific Coast Company? A. Yes, sir.

Q. For what lots?

A. Lots three and four in block three.

Mr. BAYLESS.—We offer that contract for a deed in evidence.

Mr. GUNNISON.—Same objection.

The COURT.—Objection overruled.

Mr. BAYLESS.—I would like to have the privi-

(Testimony of P. L. Gemmett.)

lege of reading those agreements in evidence. They are originals and belong to Mr. Gemmett.

Mr. GUNNISON.—We have no objection to substituting copies, if they are admitted in evidence.

Mr. BAYLESS.—Q. Mr. Gemmett, will you leave them for a little while? A. Yes.

The COURT.—Let the clerk mark them so as to identify them.

(Admitted in evidence and marked “Plaintiff’s Exhibits No. 26 and No. 27.”)

Q. (By Mr. BAYLESS.) These are the only paper writings between you and the Pacific Coast Company, are they?

A. With the exception of Howard Ewing and myself.

Q. An agreement with Howard Ewing—that is not between you and the Pacific Coast Company?

A. Individually—no.

Q. You have no deeds for these lots from the Pacific Coast Company? A. No.

Cross-examination.

(By Mr. GUNNISON.)

Q. What is the agreement between you and Mr. Ewing with reference [545—505] to these lots—have you sold your interest in them?

Mr. BAYLESS.—Object to that as incompetent and immaterial.

The COURT.—Q. Does it relate to these lots?

A. No; another lot we own is all.

Q. (By Mr. GUNNISON.) It doesn’t relate to lots two, three and four in block three?

(Testimony of P. L. Gemmett.)

A. No.

Q. Were those agreements executed on the day they bear date?

A. On the day they bear date, yes.

Q. Or on the day when they were acknowledged?

A. On the day they bear date.

Q. Well, if they were acknowledged on the fourteenth of August and the instrument bears the date of the 11th of May, 1913, which day were they executed and delivered to you?

Mr. BAYLESS.—Object to that as argumentative.

The COURT.—Objection overruled. Of course, the day they were executed is the day they were acknowledged, but the day they were delivered—if you mean the—

Mr. GUNNISON.—I mean delivery was part of the execution of the contract. The contract might have been executed and not delivered and until it was delivered it wouldn't be a binding contract.

The COURT.—Yes, but if a deed is made and executed and it is delivered when it takes effect as a deed—it takes effect as a deed when it is acknowledged.

Q. (By Mr. GUNNISON.) Have you paid anything on these contracts? A. Yes.

Q. On the contract for Lot 2 in Block 3, Pacific Coast Addition,—it calls for a payment of \$750 prior to the execution of the contract; have you paid that?

A. Yes, sir.

Q. Have you paid anything more on it?

A. No. [546—506]

Q. In the agreement for Lots three and four, Block

(Testimony of P. L. Gemmett.)

three, it calls for a payment of \$1500 prior to the execution of the contract; have you paid that?

A. Yes, sir.

Q. Have you paid anything more on that agreement? A. No, sir.

Q. Are you in possession of the land now?

A. Yes, sir.

Q. Have you a structure on it? A. One.

Q. Which one?

A. It is Lot three, I think. Isn't that the one next to the bakery?

Q. That is directly behind the James gridiron?

A. Yes, sir.

Q. You know where Mr. James' gridiron is?

A. Yes, sir.

Q. And it is directly behind the James gridiron?

A. Yes, sir.

Mr. GUNNISON.—That is all.

(Witness excused.)

Mr. BAYLESS.—That is all for us, your Honor.

Mr. GUNNISON.—Your Honor said we were to have the points of the compass put on this exhibit "A" and we have asked Mr. Wilhelm to come up and be sworn in order to do it. [547—507]

[Testimony of Victor H. Wilhelm, for Defendant.]

VICTOR H. WILHELM, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. GUNNISON.)

Q. Will you state your name and occupation?

(Testimony of Victor H. Wilhelm.)

A. Victor Wilhelm, surveyor.

Q. Where do you live? A. Juneau, Alaska.

Q. I hand you a plat marked Defendant's Exhibit "A" and ask you if you know what that is?

A. I do.

Q. What is it—or what was it originally before those pencil marks were put on it?

A. It is a plat of the survey of the James gridiron and vicinity thereof.

Q. Are you able to say from an examination of that plat whether the representation of the gridiron, the street, the approaches, and the lot lines marked above are accurate?

Mr. BAYLESS.—Object to that as leading.

The COURT.—Objection overruled.

A. That shows the true meridian. (Indicating.)

Q. The mark marked T. M.? A. Yes.

Q. And the point where the arrow is is the north?

A. Yes.

Q. Does that indicate the true north?

A. It does.

Q. Did you say you were able to say whether that was an accurate representation—whether that map was drawn to scale? [548—508]

A. Yes, sir; I examined the pencil original of it which was in the office before I came up.

Q. Do you know by whom that was prepared?

A. I do.

Q. By whom? A. By Mr. Hill—Lloyd G. Hill.

Q. Was he connected with your office at that time?

A. He was.

(Testimony of Victor H. Wilhelm.)

Q. And are the original notes and pencil drawings of that survey in your office? A. They are.

Q. I would ask you to state whether or not that map is drawn to scale and if, in order to testify to that, you find it necessary to refer to something—notes or maps which you have—I ask you to do so.

A. I have the original pencil drawing of this—this map was a tracing of the pencil drawing, tracing of the original which I have examined. You can see they fit right on each other.

Q. After having examined that, are you able to say whether or not that tracing is drawn to scale on Defendant's Exhibit "A"? A. Yes, I can.

Q. Well, does it—is it drawn to scale?

A. This plat is drawn to scale and is an accurate delineation of the property.

Q. Is the scale twenty feet equal to one inch correct? A. It is.

Q. Now, you referred, when you say the map is drawn to scale, to those portions of the map in ink—not the pencil marks? A. Just the ink marks.

Q. Will you mark on that north, south, east, and west?

A. Yes, sir, I will. (Witness marks drawing.)
[549—509]

Cross-examination.

(By Mr. BAYLESS.)

Q. Did you make this map yourself?

A. I did not.

Q. Did you assist Mr. Hill in surveying this property? A. No.

(Testimony of Victor H. Wilhelm.)

Q. Did you have anything to do yourself with making this survey? A. I did not.

Q. How can you be sure then that this map is an accurate representation of the property as it exists on the ground?

A. I made the statement and I can say—I said it was drawn to scale; I have scaled it and I have made surveys around here. (Indicating.)

Q. Isn't it a fact that all you know about it is that the map appears to be drawn to scale, or are you prepared to testify that this map correctly delineates the property on the ground?

A. I can say that from my knowledge of the ground it would delineate the property as it is.

Q. Have you ever had occasion to survey this gridiron? A. No, I have not.

Q. You have never surveyed the gridiron itself?

A. No.

Q. Or that in relation to the other property there?

A. Yes, I can say that, because I have located the gridiron on that. I have located it—I have not actually run out the gridiron itself.

Q. You have never, in other words, surveyed the gridiron? A. No.

Q. Nor the approaches? A. No.

Q. Then you cannot testify that this is an accurate representation of the ground, can you? [550—510]

A. I said from my knowledge of the ground, as far as knowledge of the ground is concerned.

Q. I don't quite understand you.

(Testimony of Victor H. Wilhelm.)

A. I will say that I know that map is drawn to scale.

Q. But you are not prepared to say that this map correctly delineates the property on the ground?

A. No, I am not prepared to say that.

Q. Mr. Hill is not here? A. No.

Redirect Examination.

(By Mr. GUNNISON.)

Q. Mr. Hill is ill?

A. No, he is in Canada, back east.

Q. How long has he been gone?

A. Five months.

Q. He has not been here at any time during this trial, during the last week or ten days? A. No.

Q. (By the COURT.) Are you able to testify that what you put on that map as north, south, east, and west, is correct? A. I am.

The COURT.—Very well. The map has been introduced in evidence long ago. The only thing I wanted was to put north, south, east, and west on it.

(Witness excused.) [551—511]

[Testimony of George E. James, for Defendant (in Sur-rebuttal).]

GEORGE E. JAMES, a witness called and sworn in behalf of the defendant, testified in sur-rebuttal as follows:

Direct Examination.

(By Mr. GUNNISON.)

Q. Do you know a man by the name of Peter Madsen, or Captain Peter Madsen? A. Yes, sir.

(Testimony of George E. James.)

Q. Is he occupying or using a piece of this beach at this time? A. Yes, sir.

Mr. BAYLESS.—Object to that as not proper sur-rebuttal.

Q. (By Mr. GUNNISON.) Was he using this beach at the time this action was commenced and had he been sometime prior thereto? A. He had.

Q. Under whose authority? A. Mine.

Q. Had you any written instrument with him with reference to it?

A. Yes, sir, he had a written agreement to use it for so much a month.

Q. I hand you a paper marked “Exhibit ‘B,’ number of the case 1024-A,” and ask you what that is?

A. That is the agreement between Peter Madsen and myself for the use of that gridiron.

Q. Did he pay you rent therefor? A. Yes, sir.

Q. For what period of time?

A. Since that was made up to the present time.

Mr. GUNNISON.—We offer it in evidence.

Q. Who drew it?

A. My bookkeeper, Mr. Simpson. [552—512]

Mr. BAYLESS.—We object to it as incompetent, irrelevant, immaterial, and not proper sur-rebuttal.

The COURT.—Q. When was this suit begun?

Mr. GUNNISON.—Fifteenth of August, 1913.

The COURT.—Objection overruled.

(Admitted in evidence and marked Defendant’s Ex. “D.”)

Q. (By Mr. GUNNISON.) Has the Alaska-Juneau Mining Company occupied, or did the

(Testimony of George E. James.)

Alaska-Juneau Mining Company occupy any portion of this ground prior to the time of the commencement of this action? A. Yes, sir.

Q. Under whose permission? A. Mine.

Mr. GUNNISON.—I desire to ask Mr. James one or two questions—I may have asked him this in our case in chief, but it occurs to me that it is in rebuttal of some of the testimony of Mr. Swan with reference to the delivery of lumber at the James gridiron to the Alaska-Perseverance Mining Company during the years 1905, 1906, 1907, and prior to 1908. A part of Mr. Mitchell's deposition also goes to the same subject, and, while we offer that in our case in chief, we also think it is competent in rebuttal on that same subject, and I now ask these questions with that purpose in view.

The COURT.—Just a moment. Have you been over the matter once?

Mr. GUNNISON.—Well, not fully and clearly. We have shown when Mr. James commenced delivering lumber to the Perseverance Company, but haven't shown who delivered lumber in the interim.

The COURT.—Very well, you may ask him.

Q. (By Mr. GUNNISON.) Mr. James, do you know who was selling the lumber to the Perseverance Company in the year 1905, or the Joshua-Hendy Company, who were building for the Perseverance?
[553—513] A. The Wrangell people.

Q. Willson-Sylvester Estate?

A. Willson-Sylvester Estate, yes, sir.

Q. Who furnished lumber in the year 1906?

(Testimony of George E. James.)

A. J. P. Jorgenson sawmill.

Q. Was any of that lumber delivered over this piece of ground in controversy?

A. Not to my knowledge, no, sir.

Q. Did you delivery any lumber to the Perseverance Company in 1906? A. No, sir.

Q. From whom was the lumber purchased by the Perseverance Company in 1907?

A. J. P. Jorgenson.

Q. Was any of that delivered over this piece of ground? A. Not that I know anything of.

Q. Did you deliver or sell any lumber to the Perseverance Company or deliver it over this ground in 1906? A. I did not.

Q. Well, what were the facts with reference to these matters in 1907?

A. I did not deliver any lumber to them.

Q. Who did deliver lumber to them in 1907?

A. J. P. Jorgenson.

Q. When did you commence delivering lumber to the Perseverance Company, sell lumber to the Perseverance? A. July 20, 1908.

Q. Prior to that time did you deliver any lumber to the Perseverance Company over this ground?

A. It shows one item of three dollars of lumber to the Perseverance during June of that year.

Q. Who sold them lumber prior to that time?

A. J. P. Jorgenson.

Q. Was any of that lumber delivered over your ground? [554—514] A. No, sir.

Q. And after July 20, 1908, you had a contract

(Testimony of George E. James.)

with the Perseverance Company to deliver lumber?

A. Yes, sir.

Q. And that was delivered where?

A. Over the gridiron.

Q. Was any delivered over that gridiron pursuant to any permission from anybody? A. No, sir.

Mr. GUNNISON.—That is all.

Cross-examination.

(By Mr. BAYLESS.)

Q. Mr. James, when did you say you sold the Perseverance Company that three dollars worth of lumber. A. I think that was in June.

Q. Of what year?

A. June, 1908; might have been the first part of July, but very close to the time I entered into a contract with them.

Q. How was that lumber obtained from the Jorgenson sawmill—how was it delivered from the Jorgenson sawmill to the Perseverance mine?

A. By wagon.

Q. Where did those wagons go with reference to your property? A. Over the plank road.

Q. Which was in *in* 1908? A. In 1908, yes.

Mr. BAYLESS.—I think that is all.

(Witness excused.) [555—515]

Mr. GUNNISON.—We desire to dictate in the record a motion for judgment on the pleadings.

The COURT.—Well, just a moment—let us see if all the evidence is closed.

Mr. GUNNISON.—We rest.

Mr. BAYLESS.—We rest.

(Testimony of George E. James.)

The COURT.—All right, proceed.

Mr. GUNNISON.—Comes now the defendant, George E. James, and moves the Court for judgment on the pleadings, on the ground that the plaintiff, in its pleadings, has admitted that they have sold, transferred, and dedicated to the City of Juneau a portion of the westerly—as public streets and alleys, a portion off from the westerly ends of lot two in Block S, and one and two in Block T, of the old survey, which corresponds generally to Lots two, three, and four, in Block three of the present survey of the Pacific Coast Addition, and that, by that admission, it appears that the plaintiff has deprived itself of any littoral or riparian rights which it may have had pursuant to an ownership of the upland, and they have further admitted in their pleadings that the defendant, George E. James, is in possession of the ground in controversy, and the pleadings also show that they have divested themselves thereby under the Act of 1884.

The COURT.—The motion will be denied. [556—516]

I hereby certify that the foregoing pages, numbered one to five hundred and sixteen, contain a full and true transcript of notes taken by me on the trial of the above cause from July 17 to July 22, 1914, and is, as I verily believe, a correct transcript of proceedings had on said dates.

H. F. BENSON,
Court Stenographer.

[Endorsed]: Filed in the District Court, District of Alaska, First Division. Mar. 6, 1915. J. W. Bell, Clerk. By —————, Deputy. [557]

[Plaintiff's Exhibit No. 1—Notice.]

Notice is hereby given that the undersigned W. W. Murry hereby claims for building, and wharf purposes the following described plot of land lying about one-eighth of a mile Easterly from the Town of Harrisburg on the Sea Shore the center line is marked by a blazed tree and notice and large boulder near low-water mark in line S. 25° W Magnetic the courses and distances are as follows: commencing at Stake and mound of stone 1st N. 25° E. (600) Six hundred feet, thence 2nd S. 65° E. (600) Six hundred feet, thence 3rd S. 25° W. 600 Six hundred feet to stake and mound of stone at low water mark, and thence 4th N. 65°, W. 600 feet along the water line to place of beginning.

Located March 6th, 1881.

W. W. MURRY.

Witnesses:

F. LAGLIABUE.

N. G. HILTON.

Harris Mining District, Takou, Alaska Territory,
March 12th, 1881.

R. DIXON,
Recorder.

March 12th, 1881.

Territory of Alaska,
Juneau Recording District,—ss.

I hereby certify that the foregoing is a true and

correct copy of a Notice of Location as found in the records of the Juneau Recording District, Book A or 1, of Lode Claims et., at page 144, and of the whole thereof.

[Seal]

JOHN B. MARSHALL,

U. S. Commissioner, Ex-officio Recorder.

Plffs. Exhibit No. 1. Received in evidence Jul. 17, 1914. In Cause No. 1024—A. J. W. Bell, Clerk. By J. T. Reed, Deputy. [558]

[Plaintiff's Exhibit No. 2—Minutes of Miners' Meeting of March 21, 1881.]

Rockwell, Alaska, March 21, 1881.

Pursuant to a call signed by W. M. Bennett and 22 others, the miners of Harris District met at the house of Mr. Bennett and by consent adjourned to the house known as "the Flag of all Nations"; after a statement by Mr. Bennett and consultation, Mr. Lewis was elected chairman and Mr. Reynolds, Secretary.

Motion made and seconded and carried to elect a committee of three to examine into the action already had by the citizens, and to lay out city front and other streets. Mr. Franklin, Mr. Cooper and Mr. Mahon were duly elected with instructions to recommend water front line, cross streets, size of lots, etc., and report at an adjourned meeting. After further consultation adjourned to meet and hear report of the committee on Saturday, March 26th, 1881, at 4 o'clock P. M. Adjourned.

(Signed) GEO. W. REYNOLDS,
Secretary.

Territory of Alaska,
Juneau Recording District,—ss.

I hereby certify that the foregoing is a true and correct copy of the minutes of the Miners' meeting as found in the records of the Juneau Recording District, Book A or 1, Lode Claims, etc., at page 71, and of the whole thereof.

[Seal]

JOHN B. MARSHALL,

U. S. Commissioner, Ex-officio Recorder.

Plffs. Exhibit No. 2. Received in evidence Jul. 17, 1914. In Cause No. 1024—A. J. W. Bell, Clerk. By J. T. Reed, Deputy. [559]

[Plaintiff's Exhibit No. 3—Minutes of Miners' Meeting of March 26, 1881.]

Rockwell, Alaska, March 26th/81.

Meeting met pursuant to adjournment. Mr. Lewis in the Chair. Minutes previous meeting read and approved.

Committee on city front, etc., elected at last meeting made verbal report and presented town plot which they recommended.

After discussion motion made and seconded that the report and plot be rejected. Lost.

Motion made and seconded that report and plot be accepted and approved. Carried.

After statement by Mr. Reynolds he presented the following preamble and resolution:

Whereas, Captain M. W. Murray has located outside and to the east of the City a wharf site and proposes at earliest opportunity to build a wharf and

warehouse for the accommodation of vessels and steamers and for the benefit of all citizens alike, it is the sense of the meeting that we should encourage such an enterprise; therefore it is hereby "Resolved that the miners and citizens of the District and City, recognizing that such improvements would be a public benefit, hereby accept, endorse and recognize the rights of said Capt. Murray and will by our future acts endorse and recognize his rights to the said wharf site and improvements."

Motion made and seconded that the preamble and resolution as read be *endorse* and approved. Carried unanimously.

After discussion a motion was made and seconded that a committee of three be elected to investigate the matter of the appropriation by the City of the town lot of Peter *Emesord* Corner City Front and Seward Streets for street purposes and estimate that damage down to the corner, also to estimate the benefit to anyone from the vacating the lot on the opposite [560] corner and report to the next adjourned meeting for action of citizens. Carried.

Mr. Cooper, Mr. Franklin and Mr. Stute elected with request that they report and record be presented in meeting.

After discussion a motion was made and seconded that it is the sense of this meeting that no person is entitled to locate more than one town lot and only by *bona fide* residence. Carried.

Motion made and seconded to adjourn until Mon-

day, March 28th, 1881, at 1 o'clock P. M. Adjourned.

(Signed) GEO. W. REYNOLDS,
Secretary.

Territory of Alaska,
Juneau Recording District,—ss.

I hereby certify that the foregoing is a true and correct copy of the minutes of the miners' meeting as found in the records of the Juneau Recording District in Book A or 1 of Lode Claims, etc., at page 72, and the whole thereof.

[Seal] JOHN B. MARSHALL,
U. S. Commissioner, Ex-officio Recorder.

Plffs. Exhibit No. 3. Received in evidence Jul. 17, 1914. In Cause No. 1024—A. J. W. Bell, Clerk. By J. T. Reed, Deputy. [561]

[Plaintiff's Exhibit No. 5—Deed—Murray to Johnson, Dated November 22, 1893.]

DEED—M. W. MURRY to CHAS. S. JOHNSON.
District of Alaska,
Juneau Recording District,—ss.

The within instrument was filed for record at 11 o'clock A. M. November 21st 1883 and duly recorded in Book O, on page 688, of the records of said District.

W. R. HOYT,
District Recorder.

KNOW ALL MEN BY THESE PRESENTS, that I, MARTIN W. MURRY, of the town of Juneau, District of Alaska, in consideration of Five Dollars, to me paid by Charles S. Johnson of the

town of Sitka, District of Alaska, do hereby grant, bargain, sell, remise, release and forever quitclaim unto the said Charles S. Johnson and unto his heirs and assigns, all my right, title and interest in and to the following described parcel of land, situated in the town of Juneau, and District of Alaska, to wit:

An undivided one-half ($\frac{1}{2}$) part or interest of, in and to that certain piece or parcel of land, situated, lying and being in the east end of the town of Juneau, Alaska, and known as the Murray and Carroll Wharf Premises; the same being six hundred (600) feet in length along the sea shore of Gastineaux Channel and more particularly described in the location certificate of said wharf premises recorded in Book "A" of Records, on page 144, of the Records of Harris Mining District, Alaska, to which said records for greater certainty of description of said land and premises, reference is hereby made:

Together with an undivided one-half ($\frac{1}{2}$) part, or interest of, in and to all buildings, wharfs and improvements thereon situated and erected.

TO HAVE AND TO HOLD the same, together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, unto said Charles S. Johnson, and to his heirs and assigns forever.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 22nd day of November, A. D. 1893.

M. W. MURRY. (Seal) [562]

Signed, sealed and delivered in the presence of

JOHN G. HEID.

ARCHD. CAMPBELL.

United States,
District of Alaska,—ss.

This certifies That on this 21st day of November, A. D. 1893, before me, the undersigned, a Notary Public in and for the said District, personally appeared the within named Martin W. Murry, who is known to me to be the identical person described in and who executed the within instrument, and acknowledged to me that he executed the *the* same freely and voluntarily, for the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto set my hand and Notarial Seal, the day and year last above named.

F. D. KELSEY,
Notary Public for Alaska.

United States of America,
Territory of Alaska,
Juneau Recording District,—ss.

I hereby certify that the foregoing is a true and correct copy of the records of the Juneau Recording District as appears in Book 9 of Deeds, at page 688 to 689 and of the whole thereof.

Dated July 22d, 1914.

[Seal]

JOHN. B. MARSHALL,
District Recorder.

Plffs. Exhibit No. 5. Received in evidence Jul. 17, 1914. In Cause No. 1024-A. J. W. Bell, Clerk. By J. T. Reed, Deputy. [563]

[Plaintiff's Exhibit No. 6 — Deed — Murray to Carroll, Dated October 26, 1893.]

KNOW ALL MEN BY THESE PRESENTS:

That I, M. W. Murry, of the City of Oakland, California, formerly of Juneau, Alaska, in consideration of Five Dollars to me paid by James Carroll, of the City of San Francisco, State of California, do hereby grant, bargain, sell, remise, release and forever Quitclaim unto the said James Carroll and unto his heirs and assigns all my right, title and interest in and to the following described parcel of land, situate in the said town of Juneau, and District of Alaska, to wit:

An undivided one-half ($\frac{1}{2}$) part or interest of, in and to that certain piece or parcel of land, situated, lying and being in the East end of said town of Juneau, and known as the "Murry and Carroll Wharf Premises," the same being six hundred (600) feet in length along the sea shore of Gastineau Channel, and more particularly described in the location certificate of said wharf premises, recorded in Book "A" on page 144, of the records of Harris Mining District, Alaska, to which records for greater certainty of description of said wharf premises, reference is hereby made. Together with an undivided one-half ($\frac{1}{2}$) part or interest of, in, and to all buildings, wharfs and improvements thereon situated and erected.

To Have and to Hold the Same, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining,

unto the said James Carroll and to his heirs and assigns forever

In Witness Whereof I have hereunto set my hand and seal this 26th day of October, A. D., 1893.

M. W. MURRAY. (L. S.)

Signed, sealed and delivered in presence of:

JOHN G. HEID.

F. D. KELSEY. [564]

United States of America,
District of Alaska,—ss.

This certifies that on this 26th day of October, A. D. 1893, before me, the undersigned, a Notary Public in and for district personally appeared the within named M. W. Murry, who is known to me to be the identical person described in and who executed the within instrument, and acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein mentiond.

In testimony whereof, I have hereunto set my hand and Notarial Seal the day and year last above named.

[Notarial Seal]

F. D. KELSEY,

Notary Public for Alaska.

Filed for record 12:30 P. M., Nov. 14, 1896.

H. W. MELLEN,

District Recorder.

United States of America,
Territory of Alaska,
Juneau Recording District,—ss.

I hereby certify that the foregoing is a true and correct copy of the records of the Juneau Recording

District as appears in Book 11 of Deeds, at page 665 to 666 and of the whole thereof.

Dated July 22d, 1914.

[Seal]

JOHN B. MARSHALL,
District Recorder.

Plffs. Exhibit No. 6. Received in evidence Jul. 17, 1914. In Cause No. 1024-A. J. W. Bell, Clerk. By J. T. Reed, Deputy. [565]

**[Plaintiff's Exhibit No. 7—Deed—Hughes to Griffin,
Acknowledged February 18, 1884.]**

This indenture made the —— day of ——, in the year of our Lord one thousand eight hundred and eighty-four. Between Edward C. Hughes of North Powder River, Union County, Oregon, party of the first part and M. F. Griffin of Weaverville, Trinity County, State of California, the party of the second part. Witnesseth that the said party of the first part for and in consideration of the sum of Fifteen Hundred Dollars lawful money of the United States of America to me in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released, and forever quit claimed and by these presents does grant, bargain, sell, remise and release and forever quit-claim unto said party of the second part and to his heirs and assigns all the right, title and interest of the party of the first part in and to certain mining claims or locations situated in Harris Mining District, Alaska Territory, which party of the first part has in joint ownership with James Carroll and M. W. Murry. Also all the right, title and interest of the party of the first part in and to a cer-

tain wharf and wharf site situated at the lower end of the Town of Juneau, Alaska Territory, which wharf site being located and which wharf being built in the year 1881 by said party of the first part jointly with James Carroll and M. W. Murry, together with all the dips, spurs and angles; also all the metals, ores, gold and silver bearing quartz rock and earth therein, and all the rights, privileges and franchises thereto incident, appendant and appurtenant or therewith usually had and enjoyed, and also all and singular the tenements, hereditaments and appurtenances thereto belonging or in any wise appertaining and the rents, issues and profits thereof and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity of the said party of the first [566] part of, in or to the said premises and every part and parcel thereof with the appurtenances. To have and to hold all and singular the said premises, together with the appurtenances and privileges thereto incident unto the said party of the second part, his heirs and assigns forever.

In Witness Whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

ED. C. HUGHES. (Seal)

By JAS. CARROLL,

His Attorney in Fact.

Signed, Sealed and Delivered in presence of:

M. O. B. VOORHEES.

C. C. BARTLETT.

State of California,
City and County of San Francisco.

On this 18th day of February, in the year one thousand eight hundred and eighty-four, before me, Louis Meinenger, a Notary Public in and for the said city and county, duly commissioned and sworn, personally appeared James Carroll, personally known to me to be the same person whose name is subscribed to the within instrument as the attorney in fact of Edward C. Hughes and the said James Carroll acknowledged to me that he subscribed the name of Edward C. Hughes thereto as principal and his own name as attorney in fact.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first in this certificate first above written.

[Official Seal]

L. MEININGER,
Notary Public.
R. DIXON,
Recorder.

March 17th, 1884. [567]

United States of America,
Territory of Alaska,
Juneau Recording District,—ss.

I hereby certify that the foregoing is a true and correct copy of the records of the Juneau Recording District, as appears in Book 3 of Deeds, at page 10 to 11, and of the whole thereof.

Dated July 22d, 1914.

[Seal]

JOHN B. MARSHALL,
District Recorder.

Plffs. Exhibit No. 7. Received in evidence Jul. 17, 1914. In Cause No. 1024—A. J. W. Bell, Clerk. By J. T. Reed, Deputy. [568]

**[Plaintiff's Exhibit No. 8—Deed—Murray to Griffin,
Dated June 30, 1894.]**

THIS INDENTURE, made the 30th day of June, A. D. One Thousand and eight hundred and ninety-four Between W. M. Murray of the City of Oakland, County of Alameda, State of California, the party of the first part; and Frank W. Griffin of the same place, the party of the second part, witnesseth:

That the said party of the first part for and in consideration of not only the natural love and affection which he bears to the said party of the second part but also the sum of Ten Dollars to him in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, conveyed, bargained and sold, remised, released and quitclaimed and by these presents does grant, convey, bargain and sell, remise, release and quitclaim unto the said party of the second part, and to his heirs and assigns forever, all those pieces, parcels and tracts of land and real estate situate, lying and being in the Territory of Alaska, being the separate property of the said party of the first part, having been acquired by him long before his marriage to Mrs. S. E. Griffin, and more particularly bounded and described as follows, that is to say:

II.

All that certain town property situated in the city

of Juneau, in the Territory of Alaska, described and known as lot No. 3 in Block No. 2, the said lot having a water frontage of twenty-three (23) feet, and a depth of one hundred (100) feet, running back from the water front, and the Easterly boundary line thereof parallel with the side of a certain building which in A. D. 1884 stood on the said property; that said property being the same as that described in Book B of Deeds, at page 7, of the records of Harris Mining District, Territory of Alaska, and conveyed to the said party of the first part by William H. Newcomer, by deed bearing date the 14th day of May, A. D. 1884, and recorded in [569] Book B of deeds, page 26 of the records of said Harris Mining District.

Also that certain lot, piece or parcel of land in the City of Juneau, Territory of Alaska, described and known as Lot No. 1 in Block No. 4, having a frontage on Seward Street of one hundred (100) feet and a frontage of second street of fifty (50) feet; and the house thereon; the said house and lot having been conveyed to the said party of the first part by the said William H. Newcomer by the said deed of the 14th day of May, A. D. 1884, recorded in Book B of deeds at page 26, of the said Harris Mining District.

II.

All those certain town lots and pieces or parcels of land in the said city of Juneau, Territory of Alaska, described and known as lots two (2) and three (3) in Block ten (10) as numbered and laid out on the Hannus Plot of the said City of Juneau,

together with the houses and improvements on the said lots, the said houses and lots being the same houses and lots conveyed to the said party of the first part by Antone Marks by quit-claim deed bearing date the 6th day of September, A. D. 1884, and *recorded Book C of Deeds*, at Page 77, of the records of the said Harris Mining District.

III.

All that certain town lot, with the house and improvements thereon in the said City of Juneau, Territory of Alaska, more particularly bounded and described as follows, to-wit: Bounded on the East by N. Hilton's lot, on the south by the water front, on the West by P. Corcoran's lot, and on the North by Pollen's and Borun's lot, being the same lot, house or improvements, conveyed to the said party of the first part by N. A. Fuller by deed bearing date the 10th day of September, A. D. 1884, and recorded on page 86 of Book C of Deeds of the records of the said Harris Mining District. [570]

IV.

Also all those lots, pieces and parcels of land whatever their number and extent may be, with the houses and improvements of every kind whatsoever thereon, in the said city of Juneau, Territory of Alaska, and elsewhere which the late R. Dixon before his death conveyed to the said party of the first part.

V.

Also all share, right, title and interest of the party of the first part in or to the wharf and in or to all wharf rights on the water front of the said City of Juneau and in or to all rights, franchises and priv-

ileges appurtenant thereto; and also all that share and interest in the said wharf and wharf rights formerly owned by the later M. F. Griffin of the town of Weaverville, County of Trinity, State of California, having been acquired by him by deed from E. C. Hughes.

VI.

And also all other town lots and all mines and mining claims or locations, and all other real estate of whatsoever kind, nature or description, in the Territory of Alaska, or elsewhere, which the said party of the first part now owns or holds or which stands in his name, whether for himself or as trustee for others,

Together with all and singular the tenements and hereditaments and appurtenances, rights, privileges and franchises thereunto belonging or in anywise appertaining, and the reversions and reversions, remainder and remainders, rents, issues and profits thereof,

And also all the estate, right, title, interest, property, possession, claim and demand whatsoever as well in law as in equity of the said party of the first part of in or to the above-described premises and every part and parcel thereof with the appurtenances,

To have and to hold all and singular the above mentioned and [571] described premises with the appurtenances unto the said party of the second part, and to his heirs and assigns forever.

In Witness Whereof, the party of the first part

has hereunto affixed his hand and seal the day and year first above written.

M. W. MURRY.

Signed, Sealed and Delivered in the Presence of:

M. E. GRIFFIN.

SARAH E. MURRY.

State of California,
County of Alameda,—ss.

This certifies that on this 30th day of June, A. D. 1894, before me the undersigned, a notary public in and for the said County and State, personally appeared the within named M. W. Murry, known to me to be the identical person described in and who executed the within instrument, and acknowledged to me that he executed the same.

In Witness Whereof I have hereunto set my hand and Notarial Seal the day and year last above written.

MILTON BENEDICT,
Notary Public in and for Said Alameda County
State of California.

Filed for record at 11:30 o'clock A. M., Aug. 22,
1894.

H. W. MELLEN, D. R.

State of California,
County of Alameda,—ss.

I, James E. Crane, County Clerk of the County of Alameda, State of California, and clerk of the Superior Court of said county (which is a court of record), do hereby certify that Newton *Bennet*, whose name is subscribed to the certificate of proof of acknowledgment of the annexed instrument, and

therein written, was at the time of taking said proof or acknowledgment, a notary public in and for said county, duly commissioned and qualified and authorized by law to take the same; and full faith and credit are due to all his official acts as such notary public. And I do further certify that I am well [572] acquainted with the handwriting of the said notary public, and verily believe that the signature to said certificate or proof of acknowledgment is genuine; and that said instrument is executed and acknowledged by M. W. Murry, according to the laws of the said State of California.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Superior Court at my office in the City of Oakland, County of Alameda, this 2d day of October, A. D. 1894.

[Official Seal] JAMES E. CRANE,
County Clerk and Clerk of the Superior Court of
Alameda County.

This certificate filed for record at 11 o'clock A. M.,
Nov. 14th, 1894.

H. W. MELLEN,
D. R. J. R. D.

United States of America,
Territory of Alaska,
Juneau Recording District,—ss.

I hereby certify that the foregoing is a true and correct copy of the records of the Juneau Recording District as appears in Book 10 of Deeds, at page 163 to 165 and of the whole thereof.

Dated July 22d, 1914.

JOHN B. MARSHALL,
District Recorder.

Plffs. Exhibit No. 8. Received in Evidence Jul. 17, 1914. In Cause No. 1024-A. J. W. Bell, Clerk. By J. T. Reed, Deputy. [573]

[Plaintiff's Exhibit No. 9—Deed—Johnson et ux. to Carroll, Dated February 20, 1895.]

Know all men by these presents that we, C. S. Johnson and Mary D. Johnson, husband and wife, of Juneau, Alaska, in consideration of Fifteen Hundred Dollars to them in hand paid by James Carroll do hereby grant, bargain, sell, remise, release and forever quitclaim unto the said James Carroll and unto his heirs and assigns, all our right, title and interest in and to the following described parcel of land, situate in the town of Juneau, District of Alaska, to wit:

An undivided one-half part or interest in and to that certain piece or parcel of land, situate, lying and being in the East end of the town of Juneau, Alaska, and known as the Murry and Carroll or Juneau Wharf Co. Wharf premises; the same being six hundred feet square and running along the seashore of Gastineaux Channel, and more particularly described in the location certificate of said wharf premises recorded in Book "A" of Records on page 144 of the Records of Harris Mining District, Alaska, to which said record for greater certainty of description of said lands and premises reference is hereby made.

To Have and To Hold the same together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining unto

said James Carroll and to his heirs and assigns forever.

In Witness whereof, we have hereunto set our hands and seals this 20th day of February, A. D. 1895.

C. S. JOHNSON. (Seal)

MARY D. JOHNSON. (Seal)

Signed, sealed and delivered in the presence of:

F. D. KELSEY.

JOHN G. HEID.

United States of America,
District of Alaska,—ss.

This certifies that on this 20th day of February, A. D. 1895, [574] before me, the undersigned, a notary public in and for the said district personally appeared the within named C. S. Johnson and Mary D. Johnson who are known to me to be the identical persons described in and who executed the within instrument, and acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein mentioned.

And Mary D. Johnson, wife of the said C. S. Johnson, on an examination made by me, separate and apart from her said husband, acknowledged to me that she executed the same, freely and voluntarily, and without fear, coercion or compulsion from anyone.

In testimony whereof I have hereunto set my hand and notarial seal the day and year last above named.

[Notarial Seal]

F. D. KELSEY,

Notary Public for Alaska.

Filed for record Feb. 19th, 1897—5 P. M.

H. W. MELLEN,

District Recorder.

United States of America,
Territory of Alaska,
Juneau Recording District,—ss.

I hereby certify that the foregoing is a true and correct copy of the records of the Juneau Recording District as appears in Book 12 of deeds at page 63, and of the whole thereof.

[Seal]

JOHN B. MARSHALL,
District Recorder.

Plffs. Exhibit No. 9. Received in Evidence Jul. 17, 1914. In Cause No. 1024-A. J. W. Bell, Clerk. By J. T. Reed, Deputy. [575]

[Plaintiff's Exhibit No. 10—Deed—Carroll et al. to Waterbury et al., Dated March 13, 1897.]

This Indenture, *made* this 13th day of March, 1897, between James Carroll and B. H. Carroll, his wife, and Ed. C. Hughes, of Juneau, Alaska, parties of the first part (the said Ed. C. Hughes being the same person referred to in the claim of title to the premises hereinafter described as C. E. Hughes and E. C. Hughes), and J. I. Waterbury of the City of New York, and T. Jefferson Coolidge, Jr., of Boston, Massachusetts, parties of the second part;

WITNESSETH: That the said parties of the first part, for and in consideration of the sum of Five Hundred Dollars, lawful money of the United States of America, to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, do by these presents remise, release and forever quitclaim unto the said parties

of the second part and to their heirs and assigns, all the right, title and interest which the said parties of the first part now have or which they or either of them may hereafter acquire *of* in and to the following pieces, parcels or tracts of land, situate, lying and being in the District of Alaska, and in front of or near the front of the town of Juneau, Alaska, and upon Gastineaux Channel, the same being partly upland and partly tide land, and bounded and described as follows, to wit:

Beginning at corner number eight, survey number one, exterior boundary survey of the Townsite of Juneau, thence north fifty-seven degrees, four minutes east thirty feet, thence south thirty-one degrees, fifteen minutes East three hundred and twenty feet, thence along the northeast end *lumber* houses North Sixty-seven degrees, forty-five minutes East, One Hundred feet to the Southwest side of Decker Brothers wharf, thence along the dividing line between Decker Brother and Juneau City Wharf South fourteen degrees, no minutes East one hundred and twenty-eight feet, thence along the water edge, Juneau City Wharf [576] South seventy-five degrees, forty-five minutes west two hundred and seventy-two feet, thence along outer edge Juneau City Wharf North one degree thirty minutes west, One hundred sixty-eight feet, thence North seventy-five degrees, no minutes East thirty-three feet, thence North eight degrees forty-five minutes West Twenty feet, thence North twenty-nine degrees no minutes West one hundred and seventy-two feet, thence North forty-four degrees no minutes

west fifty feet. Thence along the northwest side Block F First Street, North forty-six degrees, no minutes East fifty feet to Main Street, thence South forty-four degrees, no minutes East along the Northeast side Block F Main Street 9.4 feet to the place of beginning. Courses expressed from the true meridian, magnetic variation thirty degrees, no minutes East of North (The Wharf known as "Juneau City Wharf" being situated upon the said described premises or some part thereof; also the following described piece, parcel or tract of land, situate, lying and being in the District of Alaska about one-eighth of a mile Easterly from the Town of Juneau, Alaska, upon Gastineaux Channel, and bounded and described as follows, to wit: the center line is marked by a blazed tree and notice, and large boulder near low-water mark in line south 25 degrees west; magnetic course and distances are as follows: Commencing at stake and mound of stone, 1st North 25 Degrees East 600 feet; Thence 2nd South 65 Degrees East 600 feet; Thence 3rd South 25 Degrees West 600 feet; to stake and mound of stone at low-water mark and thence 4th North 65 degrees West 600 feet along the water line to the place of beginning. The wharf known as the Murry and Carroll Wharf, or Carroll and Murry Wharf, being situated upon the said described premises or some part thereof. The intention being to convey to the said parties of the second part, all of the above-described premises and all the premises described in Volume A at page 27 of the records in the recorder's [577] Office for the Juneau Recording

District at Juneau, Alaska, also in Volume B of said records on page 224, also in Volume A of said records at page 144.

For a more particular illustration of all of the above and foregoing premises, reference is hereby made to the map or plat of said premises, which is hereto attached, marked "A" and made a part of this instrument, said property hereby conveyed being marked on said map or plat as "Juneau City Wharf" and "Carroll Murry Wharf," the said conveyed property being illustrated on said map or plat by the portions thereof colored in red.

Together with all and singular the appurtenances, wharves, buildings and superstructures there situate, and all and singular the possession possessory rights, riparian, littoral, and all water rights connected with said premises and appertaining thereto, with the right to build and construct wharves, warehouses, etc., over and across said premises, and to possess, own, use and occupy the same and all the riparian, littoral, water and other rights thereunto appertaining or belonging, as fully as are now owned or might or could be owned, used or possessed by said parties of the first part.

Together with all the rights of egress and ingress thereto now enjoyed, used or possessed by said parties of the first part.

To have and to hold all and singular all of the above-described premises together with the appurtenances to the said parties of the second part and to their heirs and assigns forever.

In witness whereof the said parties of the first

part have hereunto set their hands and seals the day and year first above written.

JAS. CARROLL. (Seal)

D. H. CARROLL. (Seal)

By JAMES CARROL. (Seal)

Her Attorney in Fact.

ED. C. HUGHES. (Seal)

By JAMES CARROL. (Seal)

His Attorney in Fact.

Signed, Sealed and Delivered in presence of:

S. H. PILES.

J. E. LILLY. [578]

State of Washington,
County of King,—ss.

This is to certify that on this 13th day of March, 1897, personally appeared before me, the undersigned, a Notary Public, James Carroll, to me known to be one of the individuals described in and who executed the foregoing instrument and who then and there acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

Witness my hand and official seal the day and year in this instrument first above written.

[Notarial Seal]

J. E. LILLY,

Notary Public in and for the State of Washington,
Residing at Seattle.

State of Washington,
County of King,—ss.

This is to certify that on this 13th day of March, 1897, personally appeared before me, the undersigned, a Notary Public, James Carroll, to me known

to be the attorney of fact of D. H. Carroll, one of the parties described in and who executed the foregoing instrument, and the said James Carroll, attorney in fact for the said D. H. Carroll then and there acknowledged to me that he executed the foregoing instrument freely and voluntarily as and for the act and deed of said D. H. Carroll for the uses and purposes therein mentioned.

In Witness Whereof I have hereunto set my hand and seal the day and year in this instrument first above written.

[Notarial Seal]

J. E. LILLY,

Notary Public in and for the State of Washington,
Residing at Seattle.

State of Washington,
County of King,—ss.

This is to certify that on this 13th day of March, 1897, personally appeared before me, the undersigned, a Notary Public, [579] James Carroll, to me known to be the attorney in fact of Ed. C. Hughes, one of the parties described in and who executed the foregoing instrument, and the said James Carroll, attorney in fact for the said Ed. C. Hughes, then and there acknowledged to me that he executed the foregoing instrument freely and voluntarily as and for the act and deed of said Ed. C. Hughes, for the uses and purposes therein mentioned.

In Witness Whereof I have hereunto set my hand

and seal the day and year in this certificate first above written.

[Notarial Seal]

J. E. LILLY,

Notary Public in and for the State of Washington,
Residing at Seattle.

Filed for record April 13, 1897, at 1 o'clock P. M.

JOHN Y. OSTRANDER,

District Recorder.

United States of America,
Territory of Alaska,
Juneau Recording District,—ss.

I hereby certify that the foregoing is a true and correct copy of the records of the Juneau Recording District as appears in Book 12 of Deeds at page 198-199, and of the whole thereof.

[Seal]

JOHN B. MARSHALL,

District Recorder.

Plffs. Exhibit No. 10. Received in evidence Jul. 17, 1914. In Cause No. 1024—A. J. W. Bell, Clerk. By J. T. Reed, Deputy. [580]

**[Plaintiff's Exhibit No. 11—Deed—Griffin et al. to
Waterbury et al., Dated March 30, 1897.]**

This Indenture made the 30th day of March, 1897, between Frank W. Griffin, of the City and County of San Francisco, State of California, an unmarried man, and Sarah E. Murray, of the same place, a widow, the parties of the first part, and J. I. Waterbury of the City of New York, and T. Jefferson Coolidge, Jr., of Boston, Massachusetts, parties of the second part.

WITNESSETH: That the said parties of the first part for and in consideration of the sum of five

dollars (\$5.00) lawful money of the United States, to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged do by these presents remise, release and forever quitclaim unto the said parties of the second part their heirs and assigns, all of the right, title and interest which the said parties of the first part or either of them may have or may hereafter acquire in and to the following described real property situate lying and being in the District of Alaska, at the East End of the Town of Juneau, on Gastineaux Channel, and more particularly described as follows, to wit: The center line is marked by a blazed tree and notice and large boulder near low water mark in line South 25 degrees west. Magnetic course and distances are as follows: Commencing at a stake and mound of stone; first North 25 degrees East 600 feet; thence second, south 65 degrees east 600 feet; thence third, South 25 degrees west 600 feet to stake and mound of stone at low-water mark; and thence fourth, North 65 degrees West 600 feet along the water line to the place of beginning, which said described property was located March 6, 1881, by M. W. Murry, and is better known as the Carroll and Murry wharf property and premises and is better described in Book A of records, beginning at page 144 of the records of Harris Mining District, Alaska, in the office of the Recorder of said Mining District, in the said town of Juneau, and which record for greater certainty of description of said land reference is [581] hereby made; the property hereby conveyed being partly up-land, and

partly tide-land, and the wharf known as the Carroll and Murry Wharf being situated upon a portion thereof.

Together with all and singular the tenements, hereditaments and appurtenances, wharves, buildings, improvements and superstructures thereon situated and erected, and all and singular the possession possessory rights, riparian, littoral and water rights connected with said premises and appertaining thereto, with the right to build and construct wharves, warehouses, etc., over and across the said premises and to possess, own, use and occupy the same, and all the riparian and littoral rights thereunto appertaining as fully as are now owned or as might be owned, used or possessed by said parties of the first part, together with all the rights of egress and ingress thereto as now enjoyed used or possessed by the said parties of the first part.

To have and to hold, all and singular, the said premises together with the appurtenances, to said parties of the second part, their heirs and assigns forever.

In Witness Whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

FRANK W. GRIFFIN. (Seal)

SARAH E. MURRY. (Seal)

Signed, Sealed and Delivered in Presence of:

R. F. LEWIS.

M. E. GRIFFIN.

State of California,

City and County of San Francisco,—ss.

On this 20th day of March in the year One Thousand Eight Hundred and Ninety-seven (1897) before me, Mark Lane, a Notary Public in and for said City and County, residing therein, duly commissioned and sworn personally appeared Frank W. Griffin (an unmarried man) and Sarah E. Murry (widow) known to me to be [582] the persons *who* names are subscribed to the within instrument, and acknowledged that they executed the same.

In Witness Whereof I have hereunto set my hand and affixed my official seal, at my office in the City and County of San Francisco, the day and year in this certificate first above written.

[Notarial Seal]

MARK LANE,

Notary Public in and for the City and County of
San Francisco, State of California.

State of California,

City and County of San Francisco,—ss.

I, C. F. Curry, County Clerk of the City and County of San Francisco, State of California, and ex-officio clerk of the Superior Court thereof (which court is a court of record having a seal) do hereby certify, that Mark Lane, whose name is subscribed to the certificate or proof of acknowledgment of the annexed instrument, and therein written was at the time of taking such proofs or acknowledgment a notary public in and for said county and city, duly commissioned and qualified and authorized by law to take the same, and full faith and credit are due to all

his official acts as such notary. And I do further certify that I am well acquainted with the hand writing of the said notary, and verily believe that the signature to the said certificate or proof of acknowledgment is genuine and that said instrument is executed and acknowledged in accordance with the laws of the State of California.

In Witness Whereof I have hereunto set my hand and affixed the seal of the said Superior Court at my office in said city and county, this 20th day of March A. D. 1897.

[Superior Court Seal] C. F. CURRY,
County Clerk and Ex-officio Clerk of the Superior
Court. [583]

Filed for record April 13th, 1897, at 1 o'clock P. M.

JOHN Y. OSTRANDER,
District Recorder.

United States of America,
Territory of Alaska,
Juneau Recording District,—ss.

I hereby certify that the foregoing is a true and correct copy of the records of the Juneau Recording District as appears in Book 12 of deeds at page 201-2, and of the whole thereof.

[Seal] JOHN B. MARSHALL,
District Recorder.

Plffs. Exhibit No. 11. Received in evidence Jul. 17, 1914. In Cause No. 1024—A. J. W. Bell, Clerk. By J. T. Reed, Deputy. [584]

United States
Circuit Court of Appeals
For the Ninth Circuit.

Transcript of Record.
(IN THREE VOLUMES.)

PACIFIC COAST COMPANY, a Corporation,
Appellant,
vs.

GEORGE E. JAMES and EDWARD WEBSTER,
Appellees.

VOLUME III.
(Pages 641 to 844, Inclusive.)

Upon Appeal from the United States District Court
for the District of Alaska, Division No. 1.

Filed

JUL 1 - 1915

F. D. Monckton,

United States
Circuit Court of Appeals
For the Ninth Circuit.

Transcript of Record.
(IN THREE VOLUMES.)

PACIFIC COAST COMPANY, a Corporation,
Appellant,
vs.

GEORGE E. JAMES and EDWARD WEBSTER,
Appellees.

VOLUME III.
(Pages 641 to 844, Inclusive.)

Upon Appeal from the United States District Court
for the District of Alaska, Division No. 1.

[Plaintiff's Exhibit No. 12—Deed—Griffin to Waterbury et al., Dated May 12, 1897.]

THIS INDENTURE, made the 12th day of May, 1897, between Mary K. Griffin of the City and County of San Francisco, State of California, one of the heirs at law of M. T. Griffin, Deceased, the party of the first part, and J. I. Waterbury of the City of New York, and T. Jefferson Coolidge, Jr. of Boston, Massachusetts, parties of the second part.

WITNESSETH: That the said party of the first part, for and in consideration of the sum of five dollars (\$5.00) lawful money of the United States, to her in hand paid by the said party of the second part, the receipt whereof by the said party of the first part is hereby acknowledged does by these presents remise, release and forever quitclaim unto the said parties of the second part, their heirs and assigns, all the right, title and interest which the said party of the first part may have or may hereafter acquire in and to the following described real property situate lying and being in the District of Alaska, at the East end of the Town of Juneau on Gastineaux Channel, and more particularly bounded and described as follows, to wit: The center line is marked by a blazed tree and notice and large boulder near low water mark in line south 25 degrees west; magnetic course and distances are as follows: Commencing at a stake and mound of stone—first North 25 degrees East 600 feet thence Second South 65 degrees East 600 feet; Thence Third South 25 degrees West, 600 feet to stake and mound of stone at low water

mark; and thence fourth North 65 degrees West 600 feet along the water line to the place of beginning; which said described property was located March 6, 1881, by M. W. Murry, and is better known as the Carroll and Murry Wharf property and premises, and is better described in Book A of Records, beginning at page 144 of the records of Harris Mining District, Alaska, in the office of the Recorder of said Mining District, in the said Town of Juneau, to which record for greater certainty of description of said land reference is [585] hereby made: The property hereby conveyed lying partly up-land and partly tide-land and the wharf known as the Carroll and Murry wharf being situated upon a portion thereof.

Together with all and singular the tenements, hereditaments and appurtenances, wharves, buildings, improvements and superstructures therein situated and erected, and all and singular the possession possessory right, riparian and littoral and water rights connected with said premises and appertaining thereto, with the right to build and construct, wharves, warehouses etc., over and across the said premises, and to possess, own use and occupy the same and all the riparian and littoral rights thereunto appertaining as fully as are now owned or as might be owned, used or possessed by the said party of the first part, together with all her rights of egress and ingress thereto, as now enjoyed used or possessed by the said party of the first part,

To have and to hold, all and singular the said premises together with the appurtenances to said

parties of the first part, their heirs and assigns forever,

In witness whereof the said party of the first part has hereunto set her hand and seal the day and year first above written.

MARY K. GRIFFIN, (Seal)

Signed, Sealed and Delivered in presence of:

SARAH E. MURRY.

FRANK W. GRIFFIN.

State of California,

City and County of San Francisco,—ss.

On this 19th day of May in the year One Thousand Eight Hundred and Ninety Seven, before me, Milton S. Latham, a notary public, in and for the said City and County, residing therein, duly commissioned and sworn, personally appeared Mary K. Griffin, known to me to be the person whose name is subscribed to the within instrument and she acknowledged that she executed the same. [586]

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office in the City and County of San Francisco, the day and year in this certificate first above written.

[Notarial Seal] MILTON S. LATHAM,

Notary Public in and for the City and County of San Francisco, State of California.

Filed for record June 19, 1897, at 9 o'clock A. M.

JOHN Y. OSTRANDER,

District Recorder.

United States of America,
Territory of Alaska,
Juneau Recording District,—ss.

I hereby certify that the foregoing is a true and correct copy of the records of the Juneau Recording District as appears in Book 12 of Deeds, at Page 272 to 273 and of the whole thereof.

Dated July 22d, 1914.

[Seal]

JOHN B. MARSHALL,
District Recorder.

Plffs. Exhibit No. 12. Received in evidence Jul. 17, 1914. In Cause No. 1024—A. J. W. Bell, Clerk. by J. T. Reed, Deputy. [587]

**[Plaintiff's Exhibit No. 13—Trustees' Deed—Lyons
to Waterbury et al., Dated March 21, 1898.]**

No. 114.

TRUSTEES' DEED.

THOMAS R. LYONS,

to

JOHN T. WATERBURY and T. JEFFERSON
COOLIDGE, Jr.

THIS INDENTURE, Made this 21st day of March in the year of our Lord one thousand eight hundred and ninety eight, by and between Thomas R. Lyons, as trustee for the townsite of Juneau, in the Territory of Alaska, party of the first part, and John T. Waterbury and T. Jefferson Coolidge, Jr., of New York, in the and of parties of the second part, witnesseth:

Whereas said party of the first part has been ap-

pointed trustee for said townsite by the Secretary of the Interior, under the provision of sections 11 to 15 inclusive, of the act of Congress, approved March 3, 1891, entitled "An act to repeal timber culture laws, and for other purpose (26 Stats., 1095), and

Whereas, pursuant to said appointment as such trustee, said party of the first part has duly qualified and entered upon the performance of his duties as such, as provided in said act and the regulations of the Secretary of the Interior, date June 3rd, 1891, for his guidance, and

Whereas, on the 13th day of October A. D. 1893, said party of the first part, as such trustee, entered the tract of land upon which the townsite of Juneau is situate, being survey No. 1, of public surveys in Alaska, under said act, executed by _____, United States Deputy surveyor, under instructions from the United States Marshal, ex-officio surveyor-general of Alaska, bearing date of the 8th day of March, 1892, approved by said United States Marshal, ex-officio surveyor-general, on the 21st day of October, 1892, and

Whereas, said trustee has entered said land in trust for the several use and benefit of the occupants thereof, according to their respective interests, and has made survey thereof into lots, blocks, squares, streets and alleys, and has assessed upon each of the lots in said townsite the sums of money contemplated by the instruction of the Secretary of the Interior, and
[588]

Whereas, said trustee finds that according to the true spirit and intent of said act that said parties of

the second part are interested in said townsite and entitled to the premises thereon as hereinafter described, and

Whereas, said parties of the second part have paid the assessment upon said property amounting to the sum of Five Hundred and thirty-four dollars.

Now, Therefore, said party of the first part, as such trustee, by virtue of the power vested in and conferred upon him by the terms of said act, and in consideration of said sum, the receipt of which is hereby acknowledged, by these presents does grant, convey and confirm unto the said parties of the second part and their heirs and assigns all the following lot, piece, and parcel of land situate in the town of Juneau and Territory of Alaska, described as follows, to-wit:

Lots two (2) and three (3) in Block O Lots One (1) and Three (3) and Four (4) in Block P. Lots one (1) Three (3) and Four (4) in Block Q. Lots one (1) two (2) three (3) and four (4) in Block R. Lots one (1) two (2) three (3) and four (4) in Block S. Lots one (1) two (2) three (3) and four (4) in Block T. Lots one (1) two (2) three (3) and four (4) in Block O. Lots one (1) two (2) three (3) and four (4) in Block P. Lots one (1) two (2) three (3) and four (4) in Block q. Lots one (1) two (2) three (3) and four (4) in Block r. Lots one (1) two (2) three (3) and four (4) in Block s. Lots one (1) two (2) three (3) and four (4) in Block t. Which said property above described including Lots one (1) and Four (4)

in Block O and lot Two (2) in Block P. And lot two (2) in Block Q as for its exterior boundaries and is more plainly described as follows to wit: The center line is marked by a blazed tree and notice and large boulder near low water mark in line S 25 W magnetic courses and distances are as follows commencing at a stake and mound of stone First North 25 E 600 feet thence Second S' 65 E 600 feet thence third S' 25 W 600 feet to a stake and mound of stone at low water mark and thence Fourth N 65 W 600 feet along the water line to the place of beginning which said described property was located March 6th 1881, by M. W. Murray and is better known as the Carroll and Murray wharf property as described in Block "A" Juneau Records page 144.

To have and to hold the same, together with all *the* singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, forever.

IN WITNESS WHEREOF, said party of the first part, as such trustee, has hereunto set his hand and seal on the day and year first above written.

[589]

THOMAS R. LYONS, (Seal)

Trustee for Townsite of Juneau, Alaska Territory.

In Presence of:

JOHN Y. OSTRANDER.

EDWIN SHAW.

Territory of Alaska.

Be it remembered, That on this 21st day of March, A. D. 1898, before me a U. S. Commissioner, came

Thomas R. Lyons, to me personally known to be the trustee of said townsite of Juneau, Alaska, and the identical person described in, and whose name is affixed to, the foregoing conveyance as grantor, and he acknowledges the execution of the same to be his voluntary act and deed as such trustee, for the uses and purposes therein mentioned.

In Testimony Whereof, I have hereunto subscribed my name and affixed my official seal on the day and year first above written.

[Seal]

JOHN Y. OSTRANDER.

U. S. Commissioner for Alaska.

Filed for record at the request of John T. Waterbury and T. Jefferson Coolidge, Jr., on the 22d day of March, A. D. 189—, at 9 minutes past — A. M.

JOHN Y. OSTRANDER,

Recorder.

United States of America,
Territory of Alaska,
Juneau Recording District,—ss.

I hereby certify that the foregoing is a true and correct copy of the records of the Juneau Recording District as appears in Book 13 of Trustee's Deeds at page 114, and of the whole thereof.

Dated July 22d, 1914.

JOHN B. MARSHALL,

District Recorder. [590]

Plffs. Exhibit No. 13. Received in evidence Jul. 17, 1914. In cause No. 1024—A. J. W. Bell, Clerk. By J. T. Reed, Deputy. [591]

**[Plaintiff's Exhibit No. 14—Trustees' Deed—Lyons
to Waterbury et al., Dated November 9, 1898.]**

No. ———.

TRUSTEES' DEED.

THOMAS R. LYONS

TO

JOHN T. WATERBURY and T. J. COOLIDGE.

THIS INDENTURE, Made this 9th day of November in the year of our Lord one thousand eight hundred and ninety-eight, by and between Thos. R. Lyons as trustee for the townsite of Juneau, in the Territory of Alaska, party of the first part, and John I. Waterbury and T. Jefferson Coolidge Jr. of the State of New York, parties of the second part, witnesseth:

Whereas said party of the first part has been appointed trustee for said townsite by the Secretary of the Interior, under the provisions of section 11 to 15 inclusive, of the act of Congress approved March 3, 1891, entitled "An act to repeal timber culture laws, and for other purposes (26 Stats., 1095), and

Whereas, pursuant to said appointment as such trustee, said party of the first part has duly qualified and entered upon the performance of his duties as such, as provided in said act and the regulations of the Secretary of the Interior, dated June, 3 1891, for his guidance, and

Whereas, on the 13th day of October A. D. 1893, said party of the first part, as such trustee, entered the tract of land upon which the townsite of Juneau

is situate, being survey No. 1, of public surveys in Alaska, under said act, executed by Geo. W. Garside, United States Deputy surveyor, under instructions from the United States Marshal, ex-officio surveyor-general of Alaska, bearing date of the 8th day of March 1892, approved by said United States Marshal, ex-officio surveyor-general, on the 21st day of October 1892, and

Whereas, said trustee has entered said land in trust for the several use and benefit of the occupants thereof, according to their respective interests, and has made survey thereof into [592] lots, blocks, squares, streets and alleys, and has assessed upon each of the lots in said townsite the sums of money contemplated by the instructions of the Secretary of the Interior, and

Whereas, said trustee finds that according to the true spirit and intent of said act that said parties of the second part are interested in said townsite and entitled to the premises thereon as hereinafter described, and

Whereas, said parties of the second part have paid the assessment upon said property amounting to the sum of Forty Eight dollars.

Now, Therefore, said party of the first part, as such trustee, by virtue of the power vested in and conferred upon him by the terms of said act, and in consideration of said sum, the receipt of which is hereby acknowledged, by these presents does grant, convey and confirm unto the said parties of the second part and their heirs and assigns all the following lot, piece, and parcel of land situate in the town of Juneau and

Territory of Alaska, described as follows, to wit:

Lot two (2) in Block P as per the official plat thereof.

To have and to hold the same, together with all *the* singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, forever.

IN WITNESS WHEREOF, said party of the first part, as such trustee, has hereunto set his hand and seal on the day and year first above written.

THOMAS R. LYONS, (Seal)

Trustee for Townsite of Juneau, Alaska Territory.

In Presence of:

JOHN G. HEID.

ALFRED E. MALTBY.

Territory of Alaska.

Be it remembered, That on this 9th day of November A. D. 1898, before me a Notary Public, came Thomas R. Lyons [593] to me personally known to be the trustee of said townsite of Juneau, Alaska, and the identical person described in, and whose name is affixed to, the foregoing conveyance as grantor, and he acknowledges the execution of the same to be his voluntary act and deed as such trustee, for the uses and purposes therein mentioned.

In Testimony Whereof, I have hereunto subscribed my name and affixed my official seal on the day and year first above written.

[Seal]

JOHN G. HEID,

Notary Public for Alaska.

Filed for record at the request of _____
on the 9th day of November, A. D. 1898, at 3 P. M.

NORMAN E. MALCOLM,

Recorder.

United States of America,

Territory of Alaska,

Juneau Recording District,—ss.

I hereby certify that the foregoing is a true and correct copy of the records of the Juneau Recording District as appears in Book 13 of Trustee's Deeds at page 253, and of the whole thereof.

Dated July 22d, 1914.

[Seal]

JOHN B. MARSHALL,

District Recorder.

Plffs. Exhibit No. 14. Received in evidence Jul. 17, 1914. In cause No. 1024—A. J. W. Bell, Clerk. By J. T. Reed, Deputy. [594]

[Plaintiff's Exhibit No. 15—Trustees' Deed—Lyons to Waterbury et al., Dated November 9, 1898.]

No. _____.

TRUSTEES' DEED.

THOMAS R. LYONS

TO

JOHN I. WATERBURY and T. J. COOLIDGE.

THIS INDENTURE, Made this 9th day of November in the year of our Lord one thousand eight hundred and ninety-eight, by and between Thos. R. Lyons as trustee for the townsite of Juneau, in the Territory of Alaska, party of the first part, and John I. Waterbury and T. Jefferson Coolidge Jr. of the

State of New York, parties of the second part, witnesseth:

Whereas said party of the first part has been appointed trustee for said townsite by the Secretary of the Interior, under the provisions of section 11 to 15 inclusive, of the act of Congress approved March 3, 1891, entitled "An act to repeal timber culture laws, and for other purposes (26 Stats., 1095), and

Whereas, pursuant to said appointment as such trustee, said party of the first part has duly qualified and entered upon the performance of his duties as such, as provided in said act and the regulations of the Secretary of the Interior, dated June, 3 1891, for his guidance, and

Whereas, on the 13th day of October, A. D. 1893, said party of the first part, as such trustee, entered the tract of land upon which the townsite of Juneau is situate, being survey No. 1, of public surveys in Alaska, under said act, executed by Geo. W. Gar-side, United States Deputy surveyor, under instructions from the United States Marshal, ex-officio surveyor-general of Alaska, bearing date of the 8th day of March 1892, approved by said United States Marshal, ex-officio surveyor-general, on the 21st day of October 1892, and

Whereas, said trustee has entered said land in trust for the several use and benefit of the occupants thereof, according to their respective interests, and has made survey thereof into [595] lots, blocks, squares, streets and alleys, and has assessed upon each of the lots in said townsite the sums of money

contemplated by the instructions of the Secretary of the Interior, and

Whereas, said trustee finds that according to the true spirit and intent of said act that said parties of the second part are interested in said townsite and entitled to the premises thereon as hereinafter described, and

Whereas, said parties of the second part have paid the assessment upon said property amounting to the sum of Forty-eight dollars.

Now, Therefore, said party of the first part, as such trustee, by virtue of the power vested in and conferred upon him by the terms of said act, and in consideration of said sum, the receipt of which is hereby acknowledged, by these presents does grant, convey and confirm unto the said parties of the second part and their heirs and assigns all the following lot, piece, and parcel of land situate in the town of Juneau and Territory of Alaska, described as follows, to wit:

Lot two (2) in Block "Q" as per the official plat thereof To have and to hold the same, together with all *the* singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, forever.

IN WITNESS WHEREOF, said party of the first part, as such trustee, has hereunto set his hand and seal on the day and year first above written.

THOMAS R. LYONS, [Seal]

Trustee for Townsite of Juneau, Alaska Territory.

In Presence of:

JOHN G. HEID.

ALFRED E. MALTBY.

Territory of Alaska.

Be it remembered, That on this 9th day of November A. D. 1898, before me a Notary Public, came Thomas R. Lyons [596] to me personally known to be the trustee of said townsite of Juneau, Alaska, and the identical person described in, and whose name is affixed to, the foregoing conveyance as grantor, and he acknowledges the execution of the same to be his voluntary act and deed as such trustee, for the uses and purposes therein mentioned.

In Testimony Whereof, I have hereunto subscribed my name and affixed my official seal on the day and year first above written.

[Seal]

JOHN G. HEID,
Notary Public for Alaska.

Filed for record at the request of _____
on the 9th day of November, A. D. 1898, at 3 P. M.

NORMAN E. MALCOLM,
Recorder.

United States of America.

Territory of Alaska,

Juneau Recording District,—ss.

I hereby certify that the forgoing is a true and correct copy of the records of the Juneau Recording District as appears in Book 13 of Trustee's Deeds at page 254, and of the whole thereof.

Dated July 22d 1914.

[Seal]

JOHN B. MARSHALL,
District Recorder.

Plff. Exhibit No. 15, Received in evidence Jul. 17, 1914. In Cause No. 1024—A. J. W. Bell, Clerk. By J. T. Reed, Deputy. [597]

[Plaintiff's Exhibit No. 16—Trustees' Deed—Lyons
to Waterbury et al., Dated January 5, 1899.]

No. ———.

TRUSTEES' DEED.

THOMAS R. LYONS,

TO

JOHN I. WATERBURY AND T. JEFFERSON
COOLIDGE, Jr.

THIS INDENTURE, Made this 5th day of January in the year of our Lord one thousand eight hundred and ninety-nine, by and between Thomas R. Lyons as trustee for the townsite of Juneau, in the Territory of Alaska, party of the first part, and John I. Waterbury and T. Jefferson Coolidge Jr. of the State of New York, parties of the second part, witnesseth:

Whereas said party of the first part has been appointed trustee for said townsite by the Secretary of the Interior, under the provisions of section 11 to 15 inclusive, of the act of Congress approved March 3, 1891, entitled "An act to repeal timber culture laws, and for other purposes (26 Stats., 1095), and

Whereas, pursuant to said appointment as such trustee, said party of the first part has duly qualified and entered upon the performance of his duties as such, as provided in said act and the regulations of the Secretary of the Interior, dated June, 3 1891, for his guidance, and

Whereas, on the 13th day of October A. D. 1893, said party of the first part, as such trustee, entered

the tract of land upon which the townsite of Juneau is situate, being survey No. 1, of public surveys in Alaska, under said act, executed by Geo. W. Garside, United States Deputy surveyor, under instructions from the United States Marshal, ex-officio surveyor-general of Alaska, bearing date of the 8th day of March 1892, approved by said United States Marshal, ex-officio surveyor-general, on the 21st day of October 1892, and

Whereas, said trustee has entered said land in trust for the several use and benefit of the occupants thereof, according to their respective interests, and has made survey thereof into [598] lots, blocks, squares, streets and alleys, and has assessed upon each of the lots in said townsite the sums of money contemplated by the instructions of the Secretary of the Interior, and

Whereas, said trustee finds that according to the true spirit and intent of said act that said parties of the second part are interested in said townsite and entitled to the premises thereon as hereinafter described, and

Whereas, said parties of the second part have paid the assessment upon said property amounting to the sum of Fifty-four Dollars.

Now, Therefore, said party of the first part, as such trustee, by virtue of the power vested in and conferred upon him by the terms of said act, and in consideration of said sum, the receipt of which is hereby acknowledged, by these presents does grant, convey and confirm unto the said parties of the second part and their heirs and assigns all the following

lot, piece, and parcel of land situate in the town of Juneau and Territory of Alaska, described as follows, to wit:

Lots one (1) and four (4) in Block "O" as per the official plat thereof.

To have and to hold the same, together with all *the* singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, forever.

IN WITNESS WHEREOF, said party of the first part, as such trustee, has hereunto set his hand and seal on the day and year first above written.

THOMAS R. LYONS, (Seal)

Trustee for Townsite of Juneau, Alaska Territory.

In Presence of:

ALFRED E. MALTBY.

EDWIN SHAW.

Territory of Alaska.

Be it remembered, That on this 6th day of January, A. D. 1899, before me a Notary Public, came Thomas R. Lyons [599] to me personally known to be the trustee of said townsite of Juneau, Alaska, and the identical person described in, and whose name is affixed to, the foregoing conveyance as grantor, and he acknowledges the execution of the same to be his voluntary act and deed as such trustee, for the uses and purposes therein mentioned.

In Testimony Whereof, I have hereunto subscribed my name and affixed my official seal on the day and year first above written.

[Seal]

ALFRED E. MALTBY,
Notary Public for Alaska.

Filed for record at the request of ——— on the 14th day of January, A. D. 189—, at ——— minutes past 1 P. M.

NORMAN E. MALCOM,
Recorder.

United States of America,
Territory of Alaska,
Juneau Recording District,—ss.

I hereby certify that the foregoing is a true and correct copy of the records of the Juneau Recording District as appears in Book 13 of Trustee's Deeds at page 262, and of the whole thereof.

Dated July 22d, 1914.

[Seal] JOHN B. MARSHALL,
District Recorder.

Plffs. Exhibit No. 16. Received in evidence Jul. 17, 1914. In Cause No. 1024—A. J. W. Bell, Clerk. By J. T. Reed, Deputy. [600]

**[Plaintiff's Exhibit No. 17—Deed—Waterbury et al.
to Pacific Coast Co., Dated April 1, 1898.]**

This Indenture, made this first day of April, Eighteen Hundred and Ninety-eight, by and between John I. Waterbury, of Morristown, in the State of New Jersey, and T. Jefferson Coolridge, Jr., of the City of Boston, in the State of Massachusetts, parties of the first part, and the Pacific Coast Company, a corporation duly organized and existing under the laws of the State of New Jersey, party of the second part:—

Whereas the parties of the first part acting on behalf of *themselves* and *other* persons, members of

a reorganization committee, appointed, in *accordance* with a *Pan* and agreement for reorganization of the Oregon Improvement Company, to carry said Plan and Agreement into effect, have therefore pursuant to, and in furtherance of such plan of reorganization, and thereunder for the benefit of the party of the second part, the Company aforesaid, pursuant to such plan, acquired certain property, estate and rights in the property hereinafter described.

Now therefore, This Indenture, Witnesseth: That the parties of the first part in consideration of the premises, and of the sum of Ten Dollars (\$10.00) to each of them, in hand paid by the party of the Second part, and other valuable consideration, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, remised, released, conveyed and confirmed, assigned, transferred, quitclaimed and set over and do by these presents grant, bargain, sell, alien, remise, release, and confirm, assign, transfer, quitclaim and set over unto the said party of the second part its successors and assigns forever—

All and singular, the property, estate, right, title and interest, claim and possession of the parties of the first part, in or to the following described property situate, lying and being at or near the town of Juneau in the District of Alaska, that is to say;
[601]

Parcel 1. All that piece or parcel of land, and land under the water of Gastineau Channel, together with the buildings, wharves, bridges and other superstructures thereon erected, bounded and described as follows:

Beginning at a point on the Northeasterly corner of the Fisher & Tibbets old Wharf site, about one and one-half feet Northeasterly from the Northeast corner post of said wharf, which said point of beginning is distant 170.2 feet on a course North 29 degrees 36 minutes West from a point designated as Corner number Four of the exterior boundary of Juneau Townsite, survey No. 1; thence South 26 degrees 17 minutes, East 126 feet, more or less, to a line of piles defining the Southeast boundary of wharf site, thence along said line of piles South 55 degrees 30 minutes, West 440 feet to the Southwest corner of the People's Wharf, so called, in deep water thence along the southwesterly side of said Wharf North 47 degrees, West 108 feet; thence still along the same North 28 degrees, West 100 feet, to the corner of the Engine House shed, standing upon the premises hereby conveyed, thence along the same and along the Southwesterly side of Coal Bunker building standing upon said premises, North 14 degrees, West 125 feet; thence North 76 degrees, East along the Northwesterly side of said Coal Bunkers building 24 feet to the Northeast corner thereof; thence North 14 degrees, west 352 feet, thence North 48 degrees 30 minutes, West 38 feet to a point designated as corner No. 7 of the exterior boundary of the Juneau Townsite, Survey No. 1; thence along Meander line of the Juneau townsite South 83 degrees 4 minutes, East 44 feet; thence South 14 degrees, East 368 feet to Northwest corner of a warehouse standing on the said premises; thence North 76 degrees, East 32 feet, to the Northeasterly corner

of said warehouse, thence South 14 degrees, East 80 feet to the Southeasterly corner of said warehouse; thence South 21 degrees 30 minutes, East 122 feet to [602] the Northwesterly side of the wharf standing upon said premises; thence North 51 degrees 30 minutes, East 130 feet; thence due East 9 feet; thence North 51 degrees 30 minutes, East 275 feet to the point or place of beginning. Be the said several dimensions more or less: Said course being expressed from the true meridian, allowing a magnetic variation of 30 degrees East of North; Being the same premises, as designated as Parcel 1, and colored yellow upon the annexed plan or survey thereof marked "A," and hereby made a part of, this deed and description, and the wharf known as the "People's Wharf," standing upon said premises, or some part thereof.

PARCEL II.

All that piece or parcel of land, and land under the waters of the Gastineau Channel aforesaid, together with the buildings, wharves, bridges and other superstructures and improvements thereon erected, bounded and described as follows:

Beginning at a point designated as corner No. 8 of the exterior boundary of Juneau townsite, Survey No. 1, thence North 57 degrees 4 minutes, East 30 feet, thence South 31 degrees 15 minutes, East 320 feet, thence along the Northeast side of the Lumber warehouses standing upon the premises hereby conveyed, North 67 degrees 45 minutes, East 100 feet to the Southwest side of Decker Brothers Wharf, thence along the line of division between the same

and the premises hereby conveyed, South 14 degrees, East 128 feet to the outer edge of the wharf standing upon premises hereby conveyed, known as the Juneau City Wharf thence along the same south 75 degrees 45 minutes, West 272 feet, thence still along the same North 1 degree 30 minutes, West 168 feet, thence North 75 degrees, East 33 feet, thence North 8 degrees 45 minutes, West 20 feet, thence North 29 degrees, West 172 feet, thence North 44 degrees, West 50 feet, to the Northwesterly side of block F., and the southeast side of First Street, thence along the same, North 46 degrees, East 50 feet to the Southwesterly side [603] of Main Street, or the same produced, thence along the same and the Northeast of Block F. as aforesaid, South 44 degrees East 9.4/10 feet to point or place of beginning: Be the said several dimensions more or less, and the aforesaid courses being expressed from the true meridian allowing a magnetic variation of 30 degrees East of North, and the wharf known as the "Juneau City Wharf" being situated on said parcel II, or some part thereof.

PARCEL III.

All that piece or parcel of land *and land*, and land under water of the Gastineau Channel aforesaid, together with the buildings, wharves, bridges and other superstructures thereon erected described as follows:

The center line thereof is marked by a blazed tree and notice, and a large boulder near low-water mark in line South, 25 degrees West. Said premises are bounded and described as follows: Beginning at a stake and mound of stone thence North 25 degrees,

East 600 feet, thence South 65 degrees East 600 feet, thence South 25 degrees, west 6000 feet to a stake and mound of stone at low-water mark, thence North 65 degrees, West 600 feet along the water line to the point or place of beginning; the above courses being magnetic as the needle points; the wharf known as the Murry and Carroll, or the Carroll and Murray wharf being situated upon said Parcel III, or some part thereof; including hereby to include in the above described premises, all of the premises more particularly mentioned and described in the several instruments, respectively, recorded in the office of the recorder of the Juneau Recording District, at said Juneau, Alaska, in volume "A" at page 27, and at page 144, and in volume "B" at page 244, of said records: Said Parcel II and III, being more particularly designated as parcels II and III, respectively, and colored red upon the aforesaid annexed plan or survey, marked "A," hereby made a part of this deed and description and said [604] parcels II and III being the same premises conveyed to the parties of the first part by James Carroll and D. H. Carroll, his wife, and Ed. C. Hughes, by deed dated March 13th, 1897, and recorded in the office of the aforesaid recorder April 13th, 1897, in Book 12 of Deeds, on pages 18 to 200 inclusive: And also all rights of way of the parties of the first part, their servants and licensees, for ingress and egress to, from and upon the above described premises, and every part thereof, together with all and singular, the tenements, hereditaments and appurtenances, and all rights, privileges and franchises, including

all riparian, littoral and possessory rights, incident, appertaining or appendant thereto, or usually had and enjoyed there with.

And also all and singular, the estate, right, title and interest, claim and demand, possession, use and occupation of whatsoever name or nature, which the parties of the first part now have, or to which now or hereafter they might become entitled by virtue of any present estate or right in or to the shore, and the waters, and the land under the waters, of the Gastineau Channel aforesaid, or any part thereof; including the right to enter, occupy, pre-empt, reclaim, use or improve the same, or any part thereof, or to erect, construct, extend or maintain docks, wharves, moorings, approaches, causeways, bridges, warehouses, or any other superstructures thereon.

And also all and singular, the estate, right, title, interest, claims, possession and demand of whatsoever name or nature, which the parties of the first part now have, or which they may or might hereafter acquire under and by virtue of the following deeds, that is to say: Three certain deeds to the parties of the first part: The first thereof made by Mary K. Griffin, dated May 12th 1897, and recorded in the office of said Recorder June 19th 1897 in Book 12 of Deeds, at pages 272 and 273, the second made by Frank Starr dated April 16th 1897, and recorded in the office of said recorder April 17th 1897, in Book 12 of Deeds at page 211; The [605] third made by Frank W. Griffin and Sarah E. Murry, dated March 20th, 1897, and recorded in the office of said recorder April 13th, 1897, in Book 12 of Deeds, pages

201 and 202; And also seven certain deeds, to the Peoples Wharf Company, as follows: The first; made by Charles W. Young, dated and recorded March 23d, 1897, in the office of said recorder in Book 12 of Deeds, at page 131 and 132; the second; made by F. W. Young and J. F. Maloney dated and recorded March 23d, 1897, in the office of said recorder, in Book 12 of Deeds, at pages 130 and 131.

The third; made by Emery Valentine and Katherine, his wife, dated February 20th 1897, and recorded in the office of said recorder April 16th, 1897, in Book 12 of deeds at page 209; The fourth; made by Frank Young and J. F. Maloney, dated February 20th 1897, and recorded in the office of said recorder, April 16th 1897, in Book 12 of deeds, at page 206. The fifth; made by Edward O. Decker, and Lizzie, his wife, and Jay Decker, dated February 20th 1897, and recorded in the office of said recorder April 16th 1897, in book 12 of deeds at page 208. The Sixth: made by James P. Jorgenson and Lizzie, his wife, dated February 20th 1897, and recorded in the office of said recorder, April 16th, 1897, in Book 12 of deeds, at page 207. The seventh; made by Charles W. Young, dated February 20th 1897, and recorded in the office of said recorder, April 16th 1897, in book 12 of deeds, at page 205.

To have and to hold, all and singular the above described premises and every part thereof, together with the appurtenances to the said party of the second part, its successors and assigns forever.

And the said parties of the first part hereby constitute and appoint the party of the second part their

true and lawful attorney irrevocable, for them, and in their name, place and stead, but at its own proper costs, and charges, and to *its and* benefits, to apply for, receive and hold any patent, grant, or deed, to which [606] the parties of the first part may now, or hereafter, might be entitled to receive by virtue of any estate or right, possession or improvements above granted, giving their said attorney full power to do everything whatsoever requisite and necessary to be done in the premises, as fully as they, the said parties of the first part, could do, if personally present, with full substitution and revocation, hereby ratifying and confirming, all that their said attorney, or his substitution shall lawfully do or cause to be done.

Where the contrary is not expressed, the terms “parties of the first part,” herein includes their respective heirs, executors, administrators and assigns, and the term “party of the second part” includes successors and assigns. It is expressly stipulated, that no covenant by the parties of the first part shall be implied herein.

In Witness Whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

JOHN I. WATERBURY. (Seal)

T. JEFFERSON COOLRIDGE. (Seal)

State of New York,
County of New York,—ss.

I, Samuel F. Jarvis, Jr., do hereby certify that on this twelfth day of April, 1898, personally appeared before me T. Jefferson Coolridge, Jr., to me person-

ally known to be one of the individuals described in and who executed the within instrument, and acknowledged that he signed and *seal* the same as his free and voluntary act and deed for the purposes and uses therein mentioned.

Given under my hand and official seal this twelfth day of April, A. D. 1898.

[Seal] SAMUEL F. JARVIS, Jr.,
Notary Public New York County. [607]

State of New York,

City and County of New York,—ss.

I, Samuel F. Jarvis, Jr., do hereby certify that on this twelfth day of April, 1898, personally appeared before me, John I. Waterbury, to me personally known to be one of the individuals described in and who executed the within instrument and acknowledged that he signed and sealed the same as his free and voluntary act and deed for the uses and purposes therein mentioned. Given under my hand and official seal this 10th day of January, A. D. 1898.

[Seal] SAMUEL F. JARVIS, Jr.

State of New York,

County of New York,—ss.

I, William Sohmer, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being a court of record do hereby certify that Samuel F. Jarvis, Jr., whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such proof and acknowledgment, a notary public in and for said county, duly commissioned and sworn and author-

ized by the laws of said State to make the acknowledgments and proofs of deeds or conveyances for land, tenements or hereditaments in said State of New York. And further that I am well acquainted with the handwriting of such notary public, and verily believe that the signature to said certificate of proof or acknowledgment is genuine.

In testimony Whereof, I have hereunto set my hand and affixed the seal of the said Court and County, the 22 day of June, 1898.

[Seal]

WM. SOHMER,
Clerk.

Filed for record at 12:20 M., July 5, 1898.

NORMAN E. MALCOM,
Recorder. [608]

United States of America,
Territory of Alaska,
Juneau Recording District,—ss.

I hereby certify that the foregoing is a true and correct copy of the records of the Juneau Recording District as appears in Book 13 of Deeds, at page 499 to 505, inc., and the plat hereto attached, is a true and correct copy of the plat attached to the above instrument, and of the whole thereof.

Dated July 22d, 1914.

[Seal]

JOHN B. MARSHALL,
District Recorder.

Plff. Exhibit No. 17, Received in evidence Jul. 17, 1914. In Cause No. 1024—A. J. W. Bell, Clerk. By J. T. Reed, Deputy. [609]



SURVEYED AND DRAWN BY B W & CW GARSDIE U.S. Dep. JUNE 3, 1890 E.M.S. JUNE 3, 1890

SCALE
100ft to an inch.

**[Plaintiff's Exhibit No. 18—Deed—Waterbury et al.
to Pacific Coast Co., Dated April 12, 1898.]**

This Indenture, made this twelfth day of April, in the year one thousand eight hundred and ninety-eight, by and between John I. Waterbury, of Morri-son, in the State of New Jersey, and T. Jefferson Coolidge, Jr., of the City of Boston, in the State of Massachusetts, party of the first part, and the Pacific Coast Company, a corporation duly organized and existing under the laws of the State of New Jersey, party of the second part:

Whereas, the parties of the first part, acting in behalf of themselves and of other persons members of a Reorganization Committee appointed in accordance with the Plan and agreement for the reor-ganization of the Oregon Improvement Company to carry said Plan and agreement into effect, have heretofore acquired certain property, estate and rights in and to the premises hereinafter described pursuant to and in furtherance of such plan of Re-organization and thereunder for the use and benefit of the party of the second part, the company formed pursuant to such plan.

Now, therefore, This Indenture, Witnesseth: That said parties of the first part, in consideration of the premises and of the sum of Ten Dollars (\$10) lawful money of the United States to each of them in hand paid by said party of the second part, and other valuable consideration, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, remised, released, conveyed, confirmed, as-

signed, transferred, quitclaimed and set over, and do by these presents grant, bargain, sell, alien, remise, release, convey, confirm, assign, transfer, quitclaim and set over unto said party of the second part, its successors and assigns forever all and singular the following lots, pieces and parcels of land situate in the Town of Juneau, and District of Alaska, and described as follows: [611]

Lots two (2) and Three (3) In Block O.

Lots One (1) and Three (3) and Four (4) in Block P.

Lots One (1) Three (3) and Four (4) in Block Q.

Lots One (1) Two (2) Three (3) and Four (4) in Block R.

Lots One (1) Two (2) Three (3) and Four (4) in Block S.

Lots One (1) Two (2) Three (3) and Fourt (4) in Block T.

Lots One (1) Two (2) Three (3) and Four (4) in Block O.

Lots One (1) Two (2) Three (3) and Four (4) in Block P.

Lots One (1) Two (2) Three (3) and Four (4) in Block Q.

Lots One (1) Two (2) Three (3) and Four (4) in Block R.

Lots One (1) Two (2) Three (3) and Four (4) in Block S.

Lots One (1) Two (2) Three (3) and Four (4) in Block T.

Which said property above described including Lots One (1) and Four (4) in Block O and lots two

(2) in Block P and Lot Two (2) in Block Q, has for its exterior boundaries and is more plainly described as follows, to wit:—

The center line is marked by a blazed tree and notice and large boulder near low water in line S. 25 W. Magnetic courses and distances are as follows:

Commencing at a stake and mound of stone, First, N. 25 E. 600 feet; thence, Second, S. 65 E. 600 feet; thence Third, S. 25, W. 600 feet to a stake and mound of stone at low water mark, and thence, Fourth, N. 65 W. 600 feet along the water line to the place of beginning, which said described property was located March 6th, 1881, by M. W. Murry, and is better known as the Carroll and Murray Wharf property as described in Book “A,” Juneau Records, page 144.

Being the same premises heretofore conveyed to the parties of the first part by Thomas R. Lyons, as Trustee of the Town Site of Juneau, by deed bearing date the 21st day of March, A. D. 1898, and recorded in the Juneau Recording District of Alaska, in the office of the District Recorder, on the 22nd day of March, 1898, in Book 13 of Deeds (Trustees) at page 114. [612]

To have and to hold the above-described premises and every part thereof, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining unto the said party of the second part, its successors and assigns forever.

Provided, and it is hereby expressly agreed by and between the parties hereto, that no covenants by

the parties of the first part, or either of them, shall be implied herein, anything hereinbefore contained to the contrary notwithstanding.

IN WITNESS WHEREOF, the parties of the first part have hereunto set their hands and seals the day and year first above written.

JOHN I. WATERBURY. (Seal)

T. JEFFERSON COOLIDGE, Jr. (Seal)

Signed, Sealed and Delivered in the presence of:

SAMUEL F. JARVIS, Jr.

State of New York,

County of New York,—ss.

Be it remembered that on this twelfth day of April, A. D. 1898, before me, a Notary Public for the State of New York, in and for the county aforesaid, duly commissioned and sworn, personally appeared John I. Waterbury and T. Jefferson Coolidge, Jr., to me personally known to be the identical persons described in and whose names are affixed to the foregoing conveyance as grantors, and they severally acknowledged the execution of the same to be their voluntary act and deed for the uses and purposes therein mentioned.

[Seal]

SAMUEL F. JARVIS, Jr.,

Notary Public, New York.

State of New York,

County of New York,—ss.

I, William Sohmer, Clerk of the County of New York, and also clerk of the Supreme Court for the said county, the same being a court of record, do hereby certify that Samuel Jarvis, [613] Jr., whose named is subscribed to the certificate of proof

or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such proof and acknowledgment, a notary public in and for said county, duly commissioned and sworn and authorized by the laws of said State to take the acknowledgments and proofs of deeds or conveyances for land, tenements and hereditaments in said State of New York. And further that I am well acquainted with the handwriting of such notary public and verily believe that the signature to said certificate of proof or acknowledgment is genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Court and county, the 22 day of June, 1898.

[Seal]

WM. SOHMER,

Clerk.

Filed for record at 12:20 M., July 5, 1898.

NORMAN E. MALCOM,

Recorder.

Territory of Alaska,

Division No. 1,—ss.

I do hereby certify that the foregoing is a true and correct copy of the original records as taken from Book 13 of Deeds on page 505 and the whole thereof.

Dated at Juneau, Alaska, March 6th, 1915.

[Seal]

JOHN B. MARSHALL,

U. S. Commissioner and Ex-Officio District Recorder.

Plffs. Exhibit No. 18. Received in Evidence Jul. 17, 1914. In Cause No. 1024-A. J. W. Bell, Clerk. By J. T. Reed, Deputy. [614]



AUG 20 1913
 Received in evidence
 JUL 17 1913
 Received in evidence
 JUL 17 1913
 H. H. H. H.
 H. H. H. H.

DEPENDENTS EXHIBIT
 THE PACIFIC COAST CO.
 CARROL AND MURRY WHARF SITE
 JUNEAU, ALASKA
 July 1943



Ref's Exhibit No. 20
Received in evidence

JUL 17 1914
In Cause no. 1024 - A
J. W. Bell Clerk.
By: J. L. Reed Deputy.

THE PACIFIC COAST COMPANY
MAP OF A PORTION OF
JUNEAU, ALASKA
SHOWING COMPANY PROPERTY AND VICINITY
SCALE: One Inch = 50 Ft. SURVEY: Feby 11



FRANKLIN ST.

MOORE ST.

BROAD ST.

PINE ST.

101

12

**[Plaintiff's Exhibit No. 21 — Articles of
Incorporation of Pacific Coast Co.]**

UNITED STATES OF AMERICA.

STATE OF WASHINGTON.

**OFFICE OF THE
SECRETARY OF STATE.**

I, WILL D. JENKINS, Secretary of State of the State of Washington, do hereby certify that I have carefully compared the annexed copy of the **ARTICLES OF INCORPORATION OF THE PACIFIC COAST COMPANY** with the original as filed for record and recorded in this office on the 13th day of January, A. D. 1898, at page 497, book 3, Foreign Corporations, and find the same to be a true and perfect copy thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the State of Washington.

Done at Olympia, this 18th day of November, in the year of our Lord One Thousand Eight Hundred and Ninety-eight.

WILL D. JENKINS,
Secretary of State.

(The Seal of the State of Washington.) [616]

The undersigned, citizens of the United States, for the purpose of associating ourselves into a corporation to carry on the business hereinafter described under and pursuant to the provisions of an Act of the Legislature of the State of New Jersey, entitled, "An Act Concerning Corporations, Revision of 1896," approved April 21, 1896, and the other acts

amendatory thereof and supplemental thereto, make this certificate whereby we certify as follows, to wit:

I. The name assumed to designate the corporation and to be used in its business dealings is "The Pacific Coast Company."

II. The place in this state where the principal office of the corporation is to be situated is Jersey City, in the County of Hudson, and the places in this state where the business of the corporation is to be conducted are said Jersey City and such other place or places as the Board of Directors of the corporation may from time to time determine.

III. The objects for which the corporation is formed are as follows, to wit: mining and selling coal, iron and other minerals; producing, manufacturing and selling lumber; building or acquiring, maintaining and operating railways, tramways and roadways in the States of Washington, Oregon and California, and the Territory of Alaska and the territory adjacent thereto; building or acquiring, maintaining and operating steamships, steamboats and other water craft between Guaymas, Las Paz, Mazatlan, Ensenada, San Diego, San Francisco, Portland, Seattle, Victoria, Juneau, Dyea, Sitka and other ports in Mexico, California, Oregon, Washington, British Columbia, Alaska and the territory adjacent thereto, upon the Gulf of California, the Pacific and North Pacific Oceans, Behring Sea, the Columbia, Willamette and Snake Rivers, Puget Sound, and the Gulf or Straits of Georgia, and the other rivers, lakes, bays, straits, gulfs and sounds in or contiguous to the said states, countries [617]

and territories, or any thereof.

The corporation may carry on its business, or such part thereof as the Board of Directors may determine, through or by means of other corporations, whose stock, or stocks and bonds, it shall acquire and hold.

The corporation may purchase or acquire, and if acquired, hold, mortgage, pledge, sell and convey the property, rights, and franchises formerly of the Oregon Improvement Company, and which were sold November 6th, 1897, pursuant to decrees of the Circuit Court of the United States, for the District of Washington, Northern Division, the District of Oregon, and the Northern District of California, foreclosing the lien of two mortgages made by the said Improvement Company to the Farmers' Loan & Trust Company, as Trustee, to wit: its first mortgage dated May 1st, 1880, and its second or consolidated Mortgage dated November 1st, 1889, and also such other property real, personal or mixel, in or out of this state, as the Board of Directors may from time to time determine to be necessary for its business, and in payment for such property, rights and franchises, the Board of Directors may issue or cause to be issued the bonds of the corporation, secured by mortgage, and its stock, First Preferred, Second Preferred and Common.

Except with the consent of at least three-fourths of the first preferred stock represented and voted at a meeting called to consider the subject, the corporation shall not make any general mortgage, upon its property other than a mortgage or deed of trust to

secure its fifty-year gold bonds or bonds maturing June 1st, 1946, for the principal sum in the aggregate of five million dollars (\$5,000,000.) namely, five thousand (5,000) bonds for the principal sum of one thousand dollars (\$1,000.) each, bearing interest at the rate of five per cent per annum, payable semi-annually on the first days of June and December in [618] each year, which bonds may be issued in partial or complete payment for property, rights and franchises purchased by the corporation.

Until the number thereof be increased or diminished in the manner provided by law, there shall be nine Directors of the corporation, of whom one shall be an actual resident of the State of New Jersey, and all shall be shareholders.

The directors of the corporation after the first Board shall be classified in respect to the time for which they shall severally hold office as follows, to wit: at the first annual meeting of the stockholders for the election of directors held pursuant to the by-laws of the corporation, one-third of the directors shall be elected for a term of one year, one-third for a term of two years and one-third for a term of three years, and thereafter, at each successive annual meeting, directors shall be elected for a term of three years in place of those whose term shall have expired.

The Board of Directors may hold meetings and may keep the books of the corporation, except the stock and transfer books, without this state.

The Directors shall have power to make and alter the by-laws.

IV. The total amount of the capital stock of the corporation is to be twelve million, five hundred and twenty-five thousand dollars (\$12,525,000.) divided into one hundred and twenty-five thousand two hundred and fifty (125,250) shares of the par value of one hundred dollars (\$100.) each.

The amount with which it will commence business is to be one thousand dollars (\$1,000.) divided into ten (10) shares of the par value of one hundred dollars (\$100.) each.

The said capital stock of the corporation, to wit: twelve million, five hundred and twenty-five thousand dollars (\$12,525,000.) is to consist of one million five hundred and twenty-five [619] thousand dollars (\$1,525,000.) of First Preferred Stock, divided into fifteen thousand two hundred and fifty (15,250) shares of the par value of one hundred dollars (\$100.) each, four million dollars (\$4,000,000.) of Second Preferred stock, divided into forty thousand (40,000) shares of the par value of one hundred dollars (\$100.) each, and seven million dollars (\$7,000,000.) of Common Stock, divided into seventy thousand (70,000) shares of the par value of one hundred dollars (\$100.) each.

The first preferred stock shall have a first preference as to dividends to the amount of five per cent per annum, which shall not be cumulative; that is to say, the First Preferred stock in any year shall be paid five per cent in dividends before any dividend is paid upon the Second Preferred stock or the Common Stock. The First Preferred stock shall be entitled to no other or further dividend or preference.

The Second Preferred stock shall have a second preference as to dividends to the amount of four per cent per annum, which shall not be cumulative; that is to say, the Second Preferred stock in any year shall be paid four per cent in dividends before any dividend shall be paid upon the Common Stock, but shall be entitled to no other or further preference.

After the payment of five per cent upon the first preferred stock, and four per cent upon the second Preferred Stock in any year, the Common Stock shall next be entitled to four per cent in dividends; and if in any year dividends in excess of five per cent upon the First Preferred stock, four per cent upon the Second Preferred stock and four per cent upon the Common Stock to be paid, both the two classes stock last named, to wit: the Second Preferred and the Common stock, shall share ratably in such excess, each share of stock receiving the same part thereof as any other share, whether the same be Second Preferred [620] or Common stock.

The dividends upon the First Preferred and Second Preferred stock shall be paid quarterly, half-yearly or yearly, as the Board of Directors shall from time to time determine.

V. The names and residences of the incorporators and the number of shares subscribed for by each are as follows, to wit:

Name.	Residence.	No. Shares.
Hamilton H. Durand,	New York City, N. Y.	Five.
John J. Treacy,	Jersey City, N. J.	Three.
Frederick Dwight,	Brooklyn, N. Y.	Two.

VII. The date on which the existence of the cor-

poration is to begin to be the date of the filing of this certificate as required by law, and the period limited for its continuance is one hundred years from said date.

IN WITNESS WHEREOF, at Jersey City, in the County of Hudson, in the State of New Jersey, we have hereunto set our hands and seals the twenty-seventh day of November, in the year one thousand eight hundred and ninety-seven.

HAMILTON H. DURAND. (Seal)

JOHN J. TREACY. (Seal)

FREDERICK DWIGHT. (Seal)

State of New York,

City and County of New York,—ss.

BE IT REMEMBERED, that on this twenty-seventh day of November, in the year one thousand eight hundred and ninety-seven, before me Samuel F. Jarvis, Jr., a Notary Public of the State of New York, in and for the City and County of New York, personally appeared Hamilton H. Durand, John J. Treacy and Frederick Dwight, who I am satisfied are the persons named in and who executed the foregoing certificate, and, I, having first made known to them the contents thereof, they did thereupon severally acknowledge that they signed, sealed and delivered the same as their [621] voluntary act and deed.

[Seal]

SAMUEL F. JARVIS, Jr.,
Notary Public, New York County.

[Endorsed]: "Received in the Hudson Co., N. J. Clerk's Office, Nov. 29th, A. D. 1897, and recorded in Clerk's Record No. — on Page —.

JOHN G. FISHER,

Clerk."

"Filed Nov. 29, 1897. George Wurts, Secretary of State."

State of New York,

City and County of New York.

I, Henry D. Purroy, Clerk of the City and County of New York, and also being Clerk of the Supreme Court for the said city and county, the same being a Court of Record, do hereby certify, that Samuel F. Jarvis, Jr., whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such proof and acknowledgment, a notary public in and for said county, duly commissioned and sworn, and authorized by the laws of said state to take the acknowledgments and proofs of deeds or conveyances for land, tenements or hereditaments in said state of New York. And further, that I am well acquainted with the handwriting of such Notary Public, and verily believe that the signature to said certificate of proof or acknowledgment is genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Court and County, the 29 day of Nov., 1897.

[Seal]

HENRY D. PURROY.

Clerk.

STATE OF NEW JERSEY,
DEPARTMENT OF STATE.

I, George Wurts, Secretary of State of the State of New Jersey, do hereby certify that the foregoing is a true copy of [622] the Certificate of Incorporation of "The Pacific Coast Company," and the endorsements thereon, as the same is taken from and compared with the original filed in my office on the Twenty-ninth day of November, A. D. 1897, and now remaining on file therein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal, at Trenton, this twenty-first day of December, A. D. 1897.

[Great Seal, New Jersey] GEORGE WURTS,
Secretary of State.

[Endorsed]: Certified Copy of the Articles of Incorporation of Pacific Coast Company. State of Washington, Department of State, Olympia. Will D. Jenkins, Secretary of State.

Plffs. Exhibit No. 21. Received in evidence Jul. 18, 1914. In Cause No. 1024—A. J. W. Bell, Clerk. By J. T. Reed, Deputy. [623]

[Plaintiff's Exhibit No. 22—Lease—Pacific Coast Co. to Davidson, Dated July, 1, 1905.]

Plffs. Exhibit No. 4. Received in evidence Aug. 19, 1913. In Cause No. 1024—A. E. W. Pettit, Clerk. By H. Malone, Deputy.

Plffs. Exhibit No. 22. Received in evidence Jul. 18, 1894. In Cause No. 1024—A. J. W. Bell, Clerk. By J. T. Reed, Deputy.

THIS INDENTURE, made this first day of July, in the year of our Lord one thousand nine hundred and five, by and between the Pacific Coast Company, a corporation organized and existing under and by virtue of the laws of the State of New Jersey, party of the first part, and Chas. E. Davidson as received of the Partnership Estate of E. O. Sylvester and Thomas A. Willson, both deceased, party of the second part, WITNESSETH: That,

WHEREAS, under the permission and license of the party of the first part, the party of the second part has erected a platform and pilings upon tidelands in front of lots one and two, in block T of the townsite of Juneau, Alaska; and,

WHEREAS, the said party of the first part is the owner of the upland upon which said tidelands abutt and is entitled to the littoral rights thereto;

NOW, THEREFORE, the party of the first part, for and in consideration of the sum of one dollar in hand paid by the party of the second part to the party of the first part, receipt whereof is hereby acknowledged, and the covenants hereinafter expressed, hereby leases to said Chas. E. Davidson as receiver of the partnership estate of E. O. Sylvester and Thomas A. Willson, deceased, the ground now occupied by that certain piling and platform in front of the lots hereinbefore described for the term of six (6) months from the date hereof.

And the said party of the second part further agrees [624] that the structures placed upon the ground of the party of the first part hereunder shall become the property of the party of the first part and

shall remain upon the lands above described.

And the said party of the second part further agrees that at the expiration of the time above granted he will quietly and peaceably yield up possession of the said tide lands and said structures, and any structures thereon, unto the said party of the first part.

And the party of the second part, for himself, his successors and assigns, does hereby covenant and agree with the party of the first part, its successors and assigns, that he, the party of the second part, will not assign this lease or sub-let or under-let property covered by this lease, or any portion thereof, without the written consent of the party of the first part having been thereto first obtained.

IN WITNESS WHEREOF, the parties hereto have caused this lease to be signed, sealed and delivered, the day and year first above written.

THE PACIFIC COAST CO.

(Seal of Pacific Coast Company.)

J. C. FORD, (Seal)

Vice-Pres. & Genl. Mgr.

J. W. SMITH, (Seal)

Actg. Asst. Secy.

C. E. DAVIDSON, (Seal)

Receiver for Willson & Sylvester Estate.

In the presence of:

A. W. FOX.

JNO. R. WINN.

United States of America,
District of Alaska,—ss.

This is to certify, that on this 27 day of July, 1905, before me, the undersigned, a Notary Public in and for the District of Alaska, duly commissioned and sworn, personally came Chas. E. Davidson, receiver of the partnership estate of E. O. Sylvester [625] and Thomas A. Willson, both deceased, to me known to be the individual described in and who executed the within instrument, and acknowledged to me that he signed and sealed the same as his free and voluntary act and deed and as the free and voluntary act and deed of himself as receiver of said partnership estate, for the uses and purposes therein mentioned.

WITNESS my hand and official seal, the day and year first above written.

[Notarial Seal]

JNO. R. WINN,

Notary Public for the District of Alaska.

Plffs. Exhibit No. 22. Received in evidence Jul. 18, 1914. In Cause No. 1024—A. J. W. Bell, Clerk. By J. T. Reed, Deputy. [626]

Plaintiff's Exhibit No. 23.



[Endorsed]: Plff.'s Exhibit No. 23. Received in Evidence. Jul. 20, 1914. In Cause No. 1024—A. J. W. Bell, Clerk. By J. T. Reed, Deputy. [627]

**[Plaintiff's Exhibit No. 24—Contract for Deed,
Pacific Coast Co. and Messerschmidt, Dated
August 13, 1913.]**

CONTRACT FOR DEED.

THIS AGREEMENT, made and entered into this 13th day of August, A. D. 1913, by and between THE PACIFIC COAST COMPANY, a New Jersey corporation, party of the first part, and GUSTAVA MESSERSCHMIDT, party of the second part;

WITNESSETH: That if the party of the second part shall first make the payments and perform the covenants hereinafter mentioned on his part to be made and performed, the said party of the first part hereby covenants and agrees to convey to the said party of the second part by a good and sufficient quit-claim deed containing the reservations and exceptions hereinafter set forth, the lot, piece or parcel of ground situate in the town of Juneau, District of Alaska, known and described as Lot Fourteen (14), Block One (1), Pacific Coast Addition to Juneau, Alaska, excepting and reserving from the operation of this deed all littoral and riparian rights; and excepting and reserving all rights which have been or shall at any time hereafter be granted or permitted by any public authority, to purchase or occupy the tide or other lands and waters in front, abutting upon or adjacent to the above described premises.

And the vendee covenants that all rights and privileges to purchase, acquire or occupy tide lands or waters in front of, abutting upon or adjacent to, said described premises, now or hereafter granted by any

public authority shall pass and inure to the benefit of the vendor, its successors and assigns, without further conveyance; and this covenant shall run with the land above conveyed and be binding upon all subsequent owners and occupants thereof.

And the said party of the second part hereby covenants and agrees to pay the said party of the first part the sum of [628] THREE THOUSAND (\$3,000.00) DOLLARS, payable at the office of PACIFIC COAST STEAMSHIP CO., Juneau, Alaska, in the manner following:

The sum of \$1500.00 at or before the execution of this contract;

The sum of \$1500.00, as per agreement of even date.

And in case of the failure of said party of the second part to make either of the payments or interest thereon or any part thereof, or perform any of the covenants on his part hereby made and entered into, then the whole of said payments and interests shall at the election of said first party become immediately due and payable, and this contract shall at the option of the party of the first part be forfeited and determined, by giving to said second *part* ten (10) days' notice in writing of the intention of said first *part* to cancel and determine this contract, setting forth in said notice the amount due upon said contract. Such notice may be served by depositing same by registered letter in the United States Post Office at Juneau, Alaska, and addressed to the second party at the address given below. Notice to commence to run from date of such deposit.

It is mutually agreed and understood by and be-

tween the parties to this contract that ten (10) days is a reasonable and sufficient notice to be so given to said second party, in case of failure to perform any of the covenants on his part hereby made and entered into, and shall be sufficient to cancel all obligations hereunto on the part of the said first party, and fully reinvest it with all right, title and interest hereby agreed to be conveyed, and the party of the second part shall forfeit all payments made by him on this contract, and his right, title and interest in all buildings, fences or other improvements whatsoever, and such payments and improvements shall be retained by the said party of the first part in full satisfaction and in [629] liquidation of all damages by it sustained, and it shall have the right to re-enter and take possession of the premises aforesaid.

IT IS MUTUALLY AGREED, by and between the parties hereto that the time of payment shall be an essential part of this contract; and that all covenants and agreements herein contained shall extend to and be obligatory upon the heirs, executors, administrators and assigns of the respective parties.

IN WITNESS WHEREOF, both parties have hereunto set their hands and seals the day and year hereinbefore written.

THE PACIFIC COAST COMPANY. (Seal)

By S. H. EWING,

Its Attorney in Fact.

GUSTAVOUS MESSERSCHMIDT. (Seal)

Signed, sealed and delivered in the presence of

WILLIAM S. BAYLESS.

S. HELLENTHAL.

United States of America,
District of Alaska,—ss.

THIS IS TO CERTIFY that on this 28th day of August, 1913, before me, the undersigned, a Notary Public in and for the District of Alaska, personally appeared S. H. Ewing, personally known to me to be the same person whose name is subscribed to the within instrument as the attorney in fact of the Pacific Coast Company, a New Jersey corporation; and the said S. H. Ewing acknowledged to me that he subscribed the name of the said The Pacific Coast Company thereto as principal, and his own name as attorney in fact freely and voluntarily as the free and voluntary act of the said The Pacific Coast Company for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affix my official seal in this certificate, the day and year first above written.

W. S. BAYLESS,

Notary Public for Alaska.

My commission expires Dec. 10, 1913. [630]

I hereby certify that the foregoing is a true and correct and exact copy of the original instrument.

W. S. BAYLESS,

Of Attorneys for Plaintiff.

Plffs. Exhibit No. 24. Received in evidence Jul. 21, 1914. In Cause No. 1024—A. J. W. Bell, Clerk.
By ———, Deputy. [631]

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[Plaintiff's Exhibit No. 26—Contract for Deed—
Pacific Coast Co. and Gemmett, Dated August 9,
1913.]

CONTRACT FOR DEED.

THIS AGREEMENT made and entered into this 9th day of August, 1913, between PACIFIC COAST COMPANY, a New Jersey corporation, the party of the first part, and P. L. GEMMETT, the party of the second part;

WITNESSETH: That the party of the second part shall make the payments and perform the covenants hereinafter mentioned upon his part to be made and performed and the party of the first part hereby covenants and agrees to convey to the party of the second part clear of all incumbrances whatever as of the date of this contract, by good and sufficient deed of bargain and sale containing the reservations hereinafter set forth the lot, piece or parcel of ground situate in the town of Juneau, District of Alaska, known and described as Lot 2, in Block 3, Pacific Coast Addition to Juneau, Alaska, (it being understood, however, that certain portions of the property above described are now in the use and possession of others who claim the right of possession as against the party of the first part, which right the party of the first part denies), excepting and reserving from the operation of this contract all littoral and riparian rights and excepting and reserving all rights which have been or shall at any time hereafter be granted or permitted by any public authority to purchase or occupy the tide or other lands and waters in front of or abutting upon or ad-

jacent to the above described premises.

And the vendee covenants that all rights and privileges to purchase, acquire or occupy tide lands or waters in front of, abutting or adjacent to said described premises, now or hereafter granted by any public authority shall pass and inure to the benefit of the vendor, its successors and assigns *assigns*, without further conveyance; and this covenant shall run with the land above conveyed and be binding upon all subsequent [633] owners and occupants thereof.

And the said second party hereby covenants and agrees to pay to the first party the sum of three thousand dollars (\$3,000), payable at the office of the Pacific Coast Steamship Company, Juneau, Alaska, in the following manner:

The sum of seven hundred and fifty dollars (\$750) at or prior to the execution of this contract, receipt whereof is hereby acknowledged;

The sum of seven hundred and fifty dollars (\$750) on or before one year from the date that the party of the first part shall notify the party of the second part that he may enter into the sole and exclusive possession of the property herein described, such notice to be in writing and addressed to the party of the second part at the postoffice at Juneau, Alaska;

The sum of seven hundred and fifty dollars (\$750) within two (2) years from the date last mentioned;

The further sum of seven hundred and fifty dollars (\$750) within three (3) years from the date last mentioned; with interest at the rate of eight per cent. per annum, payable annually on the whole sum re-

maining from time to time unpaid, provided, however, that no interest shall be charged upon deferred payments until after the party of the second part is notified by the party of the first part that it is ready to deliver sole and exclusive possession of the property herein described; and the party of the second part agrees to pay all taxes and assessments or impositions that may be legally levied or imposed upon said land subsequent to the year 1913.

And in case of the failure of the said party of the second part to make any of the payments, or any part thereof, or to perform any of the covenants on his part hereby made and entered into, then the whole of said payments and interest shall [634] at the election of the party of the first part immediately become due and payable and this contract shall, at the option of the party of the first part, be forfeited and determined by giving to the party of the second part upon due notice in writing of the intention of the said party of the first part to cancel and determine this contract setting forth in said notice the amount due under said contract. Such notice may be served by depositing the same by registered letter in the United States postoffice at Juneau, Alaska, addressed to the said party of the second part, notice to commence to run from the date of such deposit.

IT IS MUTUALLY UNDERSTOOD AND AGREED between the parties to this contract that ten (10) days is reasonable and sufficient notice to be so given to such second party, in case of failure to perform any of the covenants hereby entered into, and shall be sufficient to cancel all obligations here-

unto on the part of said first party, and fully re-invest it with all right, title and interest hereby agreed to be conveyed, and the party of the second part shall forfeit all payments made by him on this contract, and his right, title and interest in all buildings, fences or other improvements whatsoever, and such payments and improvements shall be retained by said party of the first part in full satisfaction and in liquidation of all damages by it sustained, and it shall have the right to re-enter and take possession of the premises aforesaid.

IT IS MUTUALLY AGREED by and between the parties hereto that the time of payment shall be an essential part of this contract and that all covenants and agreements herein contained shall extend to and be obligatory upon the heirs, executors, administrators and assigns of the respective parties.

IT IS UNDERSTOOD AND AGREED that the property covered [635] by this contract of purchase is in part claimed by other parties who now claim the right to the possession of a portion of the property herein described and the party of the first part undertakes to prosecute such actions as may be necessary and proper to eject such parties from the possession of said property. If, however, the party of the first part is unable prior to the 1st of August, 1914, to remove said third persons from the possession of said property, or any part thereof, the party of the second part may, at his option, notify the party of the first part in writing of his intention to abrogate this contract and thereupon it shall become the duty of the party of the first part to return to the

party of the second part any and all payments made by him hereunder, whereupon this contract shall cease and be of no further effect.

IT IS FURTHER AGREED that the party of the first part shall on or before the 1st of August, 1914, have the option, in case it is unable to clear the property of the said third parties claiming possession thereof, of returning the purchase price, or any portion thereof, paid hereunder to the party of the second part, whereupon this contract shall cease and be null and void and any deed made or escrowed hereunder shall be returned to the party of the first part.

IN TESTIMONY WHEREOF both parties hereto have hereunto set their hands and seals the day and year first above written.

PACIFIC COAST COMPANY.

By S. H. EWING,

Its Attorney in Fact.

P. L. GEMMETT. (Seal)

Witnesses:

LEWIS P. SHACKLEFORD.

WILLIAM S. BAYLESS. [636]

United States of America,
District of Alaska,—ss.

THIS IS TO CERTIFY that on this 14th day of August, 1913, before me, the undersigned, a Notary Public in and for the District of Alaska, personally appeared S. H. Ewing, personally known to me to be the same person whose name is subscribed to the within instrument as the attorney in fact of The Pacific Coast Company, a New Jersey Corporation;

and the said S. H. Ewing acknowledged to me that he subscribed the name of the said The Pacific Coast Company thereto as principal, and his own name as attorney in fact freely and voluntarily as the free and voluntary act of the said The Pacific Coast Company for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in this certificate, the day and year first above written.

[Notarial Seal]

W. S. BAYLESS,

Notary Public for Alaska.

My commission expires Dec. 10, 1913.

[Endorsed]: Contract for Deed Between Pacific Coast Company and P. L. Gemmett. Lot 2, Block 3. Shackleford & Bayless, Juneau, Alaska. Plffs. Exhibit No. 26. Received in evidence Jul. 22, 1914. In Cause No. 1024—A. J. W. Bell, Clerk. By J. T. Reed, Deputy.

I hereby certify that the foregoing is a true and correct and exact copy of the original instrument.

W. S. BAYLESS.

OK.—R. E. ROBERTSON. [637]

[Plaintiff's Exhibit No. 27—Contract for Deed—
Pacific Coast Co. and Gemmett, Dated May 19,
1913.]

CONTRACT FOR DEED.

THIS AGREEMENT made and entered into this 19th day of May, 1913, between PACIFIC COAST COMPANY, a New Jersey corporation, the party of the first part, and P. L. GEMMETT, the party of the second part;

WITNESSETH; That the party of the second part shall make the payments and perform the covenants hereinafter mentioned upon his part to be made and performed and the party of the first part hereby covenants and agrees to convey to the party of the second part clear of all incumbrances whatever as of the date of this contract, by good and sufficient deed of bargain and sale containing the reservations hereinafter set forth the lots, pieces or parcels of ground situate in the town of Juneau, District of Alaska, known and described as Lots 3 and 4, in Block 3, Pacific Coast Addition to Juneau, Alaska, (it being understood, however, that certain portions of the property above described are now in the use and possession of others who claim the right of possession as against the party of the first part, which right the party of the first part denies), excepting and reserving from the operation of this contract all littoral and riparian rights and excepting and reserving all rights which have been or shall at any time hereafter be granted or permitted by any public authority to purchase or occupy the tide or other lands and waters in front of or abutting upon or adjacent to the above described premises.

And the vendee covenants that all rights and privileges to purchase, acquire or occupy tide lands or waters in front of, abutting or adjacent to said described premises, now or hereafter granted by any public authority shall pass and inure to the benefit of the vendor, its successors and [638] assigns, without further conveyance; and this covenant shall run with the land above conveyed and be binding

upon all subsequent owners and occupants thereof.

And the said second party hereby covenants and agrees to pay to the first party the sum of six thousand dollars (\$6,000), payable at the office of the Pacific Coast Steamship Company, Juneau, Alaska, in the following manner:

The sum of fifteen hundred dollars (\$1500) at or prior to the execution of this contract, receipt whereof is hereby acknowledged;

The sum of fifteen hundred dollars on or before one year from the date that the party of the first part shall notify the party of the second part that he may enter into the sole and exclusive possession of the property herein described, such notice to be in writing and addressed to the party of the second part at the postoffice at Juneau, Alaska;

The sum of fifteen hundred dollars (\$1500) within two (2) years from the date last mentioned.

The further sum of fifteen hundred dollars (\$1500) within three (3) years from the date last mentioned; with interest at the rate of eight per cent per annum, payable annually on the whole sum remaining from time to time unpaid, provided, however, that no interest shall be charged upon deferred payments until after the party of the second part is notified by the party of the first part that it is ready to deliver sole and exclusive possession of the property herein described; and the party of the second part agrees to pay all taxes and assessments or impositions that may be legally levied or imposed upon said land subsequent to the year 1913.

And in case of the failure of the said party of the

second part to make any of the payments, or any part thereof, [639] or to perform any of the covenants on his part hereby made and entered into, then the whole of said payments and interest shall at the election of the party of the first part immediately become due and payable and this contract shall, at the option of the party of the first part, be forfeited and determined by giving to the party of the second part upon due notice in writing of the intention of the said party of the said first part to cancel and determine this contract setting forth in said notice the amount due under said contract. Such notice may be served by depositing the same by registered letter in the United States postoffice at Juneau, Alaska, addressed to the said party of the second part, notice to commence to run from the date of such deposit.

IT IS MUTUALLY UNDERSTOOD AND AGREED between the parties to this contract that ten (10) days is reasonable and sufficient notice to be so given to such second party, in case of failure to perform any of the covenants hereby entered into, and shall be sufficient to cancel all obligations hereunto on the part of said first party, and fully reinvest it with all right, title and interest hereby agreed to be conveyed, and the party of the second part shall forfeit all payments made by him on this contract, and his right, title and interest in all buildings, fences or other improvements whatsoever, and such payments and improvements shall be retained by said party of the first part in full satisfaction and in liquidation of all damages by it sustained, and it shall

have the right to re-enter and take possession of the premises aforesaid.

IT IS MUTUALLY AGREED by and between the parties hereto that the time of payment shall be an essential part of this contract and that all covenants and agreements herein contained shall extend to and be obligatory upon the heirs, executors, administrators and assigns of the respective parties.

[640]

IT IS UNDERSTOOD AND AGREED that the property covered by this contract of purchase is in part claimed by other parties who now claim the right to the possession of a portion of the property herein described and the party of the first part undertakes to prosecute such actions as may be necessary and proper to eject such parties from the possession of said property. If, however, the party of the first part is unable prior to the 1st day of August, 1914, to remove said third persons from the possession of said property, or any part thereof, the party of the second part may, at his option, notify the party of the first part in writing of his intention to abrogate this contract and thereupon it shall become the duty of the party of the first part to return to the party of the second part any and all payments made by him hereunder, whereupon this contract shall cease and be of no further effect.

IT IS FURTHER AGREED that the party of the first part shall on or before the 1st of August, 1914, have the option, in case it is unable to clear the property of the said third parties claiming possession thereof, of returning the purchase price, or any portion thereof, paid hereunder to the party of the

second part, whereupon this contract shall cease and be null and void and any deeds made or escrowed hereunder shall be returned to the party of the first part.

IN TESTIMONY WHEREOF, both parties hereto have hereunto set their hands and seals the day and year first above written.

PACIFIC COAST COMPANY.

By S. H. EWING,

Its Attorney in Fact.

P. L. GEMMETT. (Seal)

Witnesses:

LEWIS P. SHACKLEFORD.

WILLIAM S. BAYLESS. [641]

United States of America,
District of Alaska,—ss.

THIS IS TO CERTIFY that on this 14th day of August, 1913, before me, the undersigned, a Notary Public in and for the District of Alaska, personally appeared S. H. Ewing, personally known to me to be the same person whose name is subscribed to the within instrument as the attorney in fact of The Pacific Coast Company, a New Jersey corporation; and the said S. H. Ewing acknowledged to me that he subscribed the name of the said The Pacific Coast Company thereto as principal, and his own name as attorney in fact freely and voluntarily as the free and voluntary act of the said The Pacific Coast Company for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in this certificate, the day and year first above written.

[Notarial Seal]

W. S. BAYLESS,

Notary Public for Alaska.

My Commission Expires Dec. 10, 1913.

[Endorsed]: Contract for Deed Between Pacific Coast Company and P. L. Gemmett. Lots 3 and 4, Block 3. Shackleford & Bayless, Juneau, Alaska. Plffs. Exhibit No. 27. Received in evidence. Jul. 22, 1914. In Cause No. 1024—*ct.* J. W. Bell, Clerk. By J. T. Reed, Deputy.

I hereby certify that the foregoing is a true copy of the original instrument.

W. S. BAYLESS,

Of Attorneys for Plaintiff.

O. K.—R. E. ROBERTSON. [642]

[Defendant's Exhibit "B"—Deed—Pacific Coast Co. to Messerschmidt, Dated May 10, 1913.]

THIS INDENTURE, made this 10th day of May, in the year of our Lord one thousand nine hundred and thirteen, between THE PACIFIC COAST COMPANY, a New Jersey corporation, the party of the first part, and Gustav H. Messerschmidt, of Juneau, Alaska, the party of the second part;

WITNESSETH: That the said party of the first part for and in consideration of the sum of Twenty five hundred dollars, gold coin of the United States of America, to it in hand paid, the receipt whereof is hereby acknowledged, does by these presents remise, release and forever quit-claim unto the said party of the second part, his heirs and assigns, all the right, title, interest estate, claim and demand, both at law and in equity, and as well in possession as in expectancy, of the said party of the first part, of, in and to the following described property situate in the town of Juneau, District of Alaska, to-wit; Lot Fifteen (15) in Block One (1) of the Pacific Coast Addition to the Town of Juneau, Alaska, according to the recorded plat thereof.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining. Excepting and reserving from the operation of this deed all littoral and riparian rights and excepting and reserving all rights which have been or shall at any time hereafter be granted or permitted by any public authority, to purchase or occupy the tide or other lands and water

in front abutting upon or adjacent to the above described premises.

And the grantee— covenant— that all rights and privileges to purchase, acquire or occupy tide lands or waters in front of, abutting upon or adjacent to, said described premises now or hereafter granted by any public authority shall pass and inure to the benefit of the grantor, its successors and assigns, without further conveyance and this covenant shall run with the land above conveyed and be binding upon all subsequent owners and occupants thereof.

TO HAVE AND TO HOLD all and singular the said premises together with the appurtenances unto the said party of the second part, his heirs and assigns forever, subject to the reservations and exceptions hereinabove set forth. [644]

IN WITNESS WHEREOF the said party of the first has caused these presents to be executed the day and year first above written.

THE PACIFIC COAST COMPANY.

By S. H. EWING.

Signed, Sealed and Delivered in presence of

R. E. PENGLASE.

S. HELLENTHAL.

United States of America,
District of Alaska,—ss.

THIS IS TO CERTIFY that on this 10th day of May, 1913, before me, the undersigned, a Notary Public in and for the District of Alaska, personally appeared S. H. Ewing, personally known to me to be the same person whose name is subscribed to the with-

in instrument as the attorney in fact of the Pacific Coast Company, a New Jersey corporation; and the said S. H. Ewing acknowledged to me that he subscribed the name of the said The Pacific Coast Company thereto as principal and his own name as attorney in fact freely and voluntarily as the free and voluntary act of the said The Pacific Coast Company for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal in this certificate, the day and year first above written.

[Notary Seal] WILLIAM S. BAYLESS.

Notary Public in and for the District of Alaska.

Filed for record at 3 o'clock P. M. May 10, 1913, in Book 24 of Deeds, page 13.

G. C. WINN,
District Recorder.

United States of America,
Territory of Alaska,
Juneau Recording District,—ss.

I hereby certify that the foregoing is a true and correct copy of the records of the Juneau Recording District as appears in Book 24 of deeds, at page 13, and of the whole thereof.

[Seal] JOHN B. MARSHALL,
District Recorder. [645]

Defts. Exhibit No. "B." Received in Evidence
Jul. 21, 1914, in Cause No. 1024-A. J. W. Bell,
Clerk. By J. T. Reed, Deputy. [646]

[Defendant's Exhibit "C"—Plat of Pacific Coast
Addition to City of Juneau, etc.]

THE PACIFIC COAST ADDITION.

Juneau, Alaska.

February 28, 1913.

Scale: One inch=50 ft.

DESCRIPTION.

THE PACIFIC COAST ADDITION, an addition to the Town of Juneau, Alaska, is a subdivision or replat of that portion of the said town designated on Garsides official map as the "Carrol and Murray Wharfsite," and the tide lands fronting thereon, and this plat is referred to that official map as to the exterior boundaries hereon. Courses shown are from the true meridian, the corresponding courses as given on the Hardise official map being shown in parentheses. All street, lot and block dimensions are as shown on the face of plat. The exterior boundary is particularly described as follows: Beginning at meander Corner No. 1, as shown on the official map; thence N. $60^{\circ} 30'$ E., 605.0 feet; thence N. $37^{\circ} 21'$ W., 300.0 feet; thence N. $22^{\circ} 11'$ W., 279.0 feet; thence S. $60^{\circ} 31'$ W., 1022.0 feet; thence S. $45^{\circ} 29'$ E., 596.99 feet; thence N. $60^{\circ} 31'$ E. 258.0 feet to the point of beginning.

JAMES ANDERSON,
M.

Chief Engineer, The Pacific Coast Co.

Resolved by the Common Council of the City of Juneau that the replat submitted by the Pacific Coast Company for ground within present town of Juneau,

known as Carrol and Murray Wharfsite, to be known as The Pacific Coast Addition to the Town of Juneau, is hereby accepted as the official plat thereof.

H. A. BISHOP,
Mayor.

Attest: A. W. FOX,
Clerk.

Passed and approved this 28th day of February, 1913, A. D. [647]

DEDICATION.

State of Washington,
County of King,—ss.

Know all men by these presents, that the Pacific Coast Co., a corporation, existing under the laws of the State of New Jersey, and licensed to and doing business, in the District of Alaska, owners in fee simple of the lands embraced in this plat of the Pacific Coast Addition do hereby declare this plat and do hereby dedicate to the use of the public forever all the streets and alleys shown thereon.

In Witness Whereof the said The Pacific Coast Company has caused its corporate name to be hereunto subscribed by its Vice-President and Asst. Secretary, and has caused its corporate seal to be hereunto affixed, this 12 day of February, A. D. 1913.

[Corporate Seal] THE PACIFIC COAST CO.

J. C. FORD,
Its Vice-president.
J. W. SMITH,
Its Asst. Secretary.

ACKNOWLEDGMENT.

State of Washington,
County of King,—ss.

On this 12 day of February, 1913, before me personally appeared J. C. Ford, to me known to be the Vice-President, and J. W. Smith, to me known to be the Asst. Secretary of the Pacific Coast Company, a New Jersey corporation, the corporation that executed the foregoing instrument, and severally acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned and on oath severally stated that he was authorized to execute said instrument and that the seal affixed is the [647a] corporate seal of said corporation.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

[Notarial Seal] J. F. DUNNE,
Notary Public in and for the State of Washington,
Residing at Seattle.

United States of America,
Territory of Alaska,—ss.

I hereby certify that this and the preceding two pages, and the plat hereto attached, are true and correct copies of the plat of The Pacific Coast Addition of the City of Juneau, filed in the office of the Juneau Recording District and attached at the end

of No. 13 Trustees Book of Deeds, and of the writing contained on said plat, and of the whole thereof.

[Seal]

JOHN B. MARSHALL,

U. S. Commissioner, District Recorder.

Defts. Exhibit No. "C." Received in evidence Jul. 21, 1914. In Cause No. 1024-A. J. W. Bell, Clerk. By J. T. Reed, Deputy. [647b]



**[Defendant's Exhibit "D"—Agreement—Madsen
and James—Dated June 6, 1913.]**

THIS *IDENTURE*, made this sixth day of June, in the year of our Lord One Thousand, nine hundred and thirteen, between Peter Nadsen of Juneau, Alaska, party of the first part and Geo. E. James of Douglas, Alaska, the party of the second part.

The said party of the second part hereby agrees to let the party of the first part use their gridiron located at Juneau, Alaska, and the two approaches to said gridiron for the purpose of landing scows, boats, *ect.*

The party of the first part agrees to have the gridiron free at any time the said party of the second part may want to use it and not delay them in the handling of their scows of lumber.

For the use of the said gridiron and the two approaches, the party of the first part hereby agrees to pay to the said party of the second part the sum of Five Dollars (\$5.00) per month so long as this agreement may remain in force, said amount to be paid upon the last day of each month.

IN WITNESS WHEREOF, the said parties of the first and second part hath hereunto set their hand and seal.

PETER MADSEN. [Seal]

GEO. E. JAMES. (Seal)

_____,
_____,

Defts. Exhibit No. "B." Received in evidence Aug. 19, 1913. In Cause No. 1024-A. E. W. Pettit, Clerk. By H. Malone, Deputy.

Defts. Exhibit No. "D." Received in evidence Jul. 22, 1914. In Cause No. 1024-A. J. W. Bell, Clerk. By J. T. Reed, Deputy. [648]

No 1024—A.

PACIFIC COAST COMPANY, a Corporation,
Plaintiff,

vs.

GEORGE E. JAMES and EDWARD WEBSTER,
Defendants.

Deposition of J. C. Hunter.

(Before Judge Jennings.)

(May 29, 1914.)

Mr. BAYLESS.—If the Court please, in the matter of the case of the Pacific Coast Company vs. George E. James, Captain J. C. Hunter is present and I desire to have his testimony taken at this time and I think it may be stipulated that the testimony of Captain Hunter may be taken in open court at this time and used at the trial of the case.

The COURT.—Not in open court. I am willing to hear the testimony of Captain Hunter, if you gentlemen stipulate that the record may be made up and used at the trial, but not taken as in open court.

Mr. GUNNISON.—We are willing to make that stipulation, provided, of course, we are not considered as in any way waiving our right to ask for a

continuance on Monday. We don't wish to be put in that position.

The COURT.—The testimony is being taken before me just as if it were before a notary public.

Mr. BAYLESS.—Very well, sir; I will ask to have Mr. Hunter sworn: [649]

[Deposition of J. C. Hunter, for Plaintiff.]

J. C. HUNTER, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination.

(By Mr. BAYLESS.)

Q. Your name is Captain J. C. Hunter?

A. J. C. Hunter, yes.

Q. You are present master of the steamer "North-western?"

A. Yes, sir.

Q. How old are you?

A. Seventy-one.

Q. When did you first come to Alaska?

A. In '83.

Q. What boat did you first come on?

A. A boat called the "Eureka."

Q. Where did you land at in Juneau at that time?

A. At Captain Carroll's Dock.

Q. That dock was situated in Juneau?

A. Yes, on the right-hand shore of Gastineau Channel.

Q. Just describe the situation with reference to that dock as it existed at the time you first came up here.

A. When I first came up the foundation was made of cribbing—piling laid that way (indicating) full of stones, and the pier projected out to deep water.

(Deposition of J. C. Hunter.)

The front of it was a T, and I can't really tell how big it was, but it was not very big, the wharf was fifty or sixty feet or so.

Q. That is, the face of the dock?

A. The face, parallel to the beach—landed star-board side always.

Q. What was the practice in landing the vessels at that time [650] at the Carroll-Murray Dock?

A. We would come right down alongside the face of the dock, headed up here towards town, and then have the stern line on the beach fastened to a big stone or something.

Q. Why did you make fast your stern line to something on the beach?

A. We had to do that to hold the ship to the face of the dock.

Q. Because the face of the dock was so small?

Mr. GUNNISON.—We object to the interjection of counsel as leading.

The COURT.—Objection overruled. It is a leading question. It depends a great deal on the intelligence of the witness—I don't think Mr. Bayless could lead the Captain to say what he ought not to say.

Q. (By Mr. BAYLESS.) Was that the reason you made fast to the shore?

A. Yes. On all the passenger steamers generally you will find hatchways on the ends of the vessel, and if a ship was laying just as much projecting on one side as on the other, you would still have a line on the beach, but all steamers running up here have the

(Deposition of J. C. Hunter.)

stern sticking over, more than seven-tenths of the ship sticking out. The vessels were long—the “El Dorado” and “Mexico”—

zzzx

Q. The “George W. Elder”?

A. Yes; they were long ships and a hatch right in the nose of her and we had to have a line down from the stern onto something there—I don’t know whether it was a pile or something else on shore. I know this much, sometimes we had to get to shore on a boat to get a line on it, and sometimes put a line on the wharf and then walk down to this object. [651]

Q. The present gridiron of Mr. James’—do you know where that is situated? A. No, I never—

Q. Do you know where that gridiron is situated at the present time?

A. Well, I haven’t been down on the dock—I have seen some boats there, but I don’t know who owns them.

Q. You remember as we walked up this morning.

A. That wasn’t up here when I came up here.

Q. Do you know where with reference to the present gridiron these piles you tied up to were situated?

A. Oh, well, they were tied up somewhere about there. I never had any occasion and I never, when she was ashore or at low tide, measured down from the ship and see where the line should be. The line would be no good by having it over here. (Indicating.) You have got to have it at a certain angle to hold her from ranging, and that is the way you would do it to-day.

(Deposition of J. C. Hunter.)

Q. Do you know how large the Carroll-Murray wharf site was?

A. No, I never heard how much—how big the space was. I know the face of the dock was about fifty or sixty feet.

Q. The face of the wharf? A. Yes, sir.

Q. How much beach, in your opinion, was required to land there?

A. I couldn't say, because the beach line could—

Mr. GUNNISON.—I object to the question on the ground that it is indefinite. He said, "How much beach line would be required." Read the last question, please.

(Read by stenographer.) How much beach, in your opinion, was required to land there?

Mr. GUNNISON.—To land there? [652]

Mr. BAYLESS.—Q. Yes; how much beach line was necessary, in your opinion, to land the boats which you sailed on up here in the early days?

Mr. GUNNISON.—We object to that on the ground that it is irrelevant and indefinite. You don't land a boat on the beach.

The COURT.—Objection overruled. He has just described the dock. Of course, I don't know the issues of this case. I am not trying the case just now. He has stated that the face of the wharf was only fifty or sixty feet and he had to make fast one end of the boat to the beach, and now the question is: How much of the line of the beach was it necessary to use in order to land boats.

Mr. GUNNISON.—Exception.

(Deposition of J. C. Hunter.)

A. (By the WITNESS.) The line is a hundred and twenty-five fathoms long and it always took most of the line to run down to the mooring—to this object where we would make fast to. Of course, there was nothing to hold the ship to the dock; the dock was only small and there was no possible way to have it extending down this way (indicating). It could very easily be measured to a few feet.

Q. (By Mr. BAYLESS.) Just describe to the Court how this line was taken from the ship and made fast to this object.

A. Well, give me a piece of paper and I will show you the way the land looked. (Witness indicating on sheet of paper.) The wharf came out in this shape—like that. That is the way the wharf lay. Here when a ship came up alongside the dock, the hatchway was about this way. We would land a boat in this fashion. This line was fastened to the dock and another line over there on something on shore, an angle about forty or forty-five degrees [653] from there and when you come up there this way, we had another object over here to make fast to.

Q. This is about the relative position of Mr. James' gridiron with reference to this sketch?

A. Yes.

Q. I would ask you in your opinion as a navigator in the early days—

Mr. GUNNISON.—I object—

Mr. BAYLESS.—I will qualify him.

Mr. GUNNISON.—To counsel pointing out the relative position of anything. If he wants Captain

(Deposition of J. C. Hunter.)

Hunter to testify about where the point was where they tied up that line, I think that is competent—where they moored the land end of that line—but I don't believe it is competent for counsel to just naturally go on that paper and point out something that seems to please him as to place. I don't think it is the proper way to put it.

The COURT.—Objection sustained. Mr. Bayless, ask the Captain if he can locate where the gridiron is, if you want to get the relative position. You are introducing the Captain to draw a map and you are interfering with him by changing it on there yourself.

Mr. GUNNISON.—I would ask to have that erased.

Mr. BAYLESS.—There is a map on exhibition here.

Q. Captain, I hand you a plat introduced in the preliminary hearing, known as Plaintiff's Exhibit No. 2, and ask if you can identify the old Carroll-Murray wharf there. A. Yes.

Q. I will ask you if you can identify the Carroll-Murray wharf and its position.

A. This is the shore line and this is the opposite end and [654] this is the bend in that old wharf, and when we come in to the old dock we landed here, and our forehatch was there. Here was our line down to the beach. And another thing we—there was nothing there on the beach to interfere with our doing this. This is our landing, and came up here and run a line here and there. (Witness indicating on plat.)

(Deposition of J. C. Hunter.)

Q. Then I will ask you in your opinion if in that case, how much space on the shore line was necessary to land your vessel, that is, from point to point?

A. Well, it was necessary to get this angle from the ship. If the ship is two hundred and sixty feet long, then this should be one hundred and forty feet from there and to one hundred and forty feet to there, and on an angle of forty degrees at twenty-two fathoms of water. That would go way over here. I never measured the space over there, never stepped it over there, but when we come in there sometimes we would lower a boat and run a line to there and sometimes we would pass a line here to the dock and take it down to the beach. You couldn't get there in high water, because I remember during high water you could hardly get to town, had to get into the bushes. I never remember anything in there, never remember piles there. There was a stump or something on the beach. I never stepped off the space there.

Q. Well, you are not prepared to say then how big a wharf site it would have to be?

A. No, I don't know, I couldn't say. The question was to my mind that you can take all that you can get to make a ship fast. There was no one to tell you—it was a question with you. We put in where it was convenient for us— [655] that we could hold the ship safely. Whether a thousand feet or 150 feet. I don't know anything about it.

Q. You first came up here in '83? A. Yes, sir.

Q. That is the way you landed boats?

(Deposition of J. C. Hunter.)

A. Yes, sir, and all the way up to '92—that ship was the “Mexico”—that was the last ship I was up here on. I was up here in '97 and we landed up at this new dock in '97, and '98 on the “Cottage City.” From '83 to '92 we landed at this dock.

Q. And you landed the way you have described to the Court?

A. Yes, and I never remember anything else except the slaughter-house down there, because coming up with cattle we had to land cattle out through the port an wed had a line from the beach to keep the cattle from swimming across. I don't remember the beach line—how many feet was there.

Mr. BAYLESS.—That is all.

Cross-examination.

(By Mr. GUNNISON.)

Q. Captain Hunter, what was the size of the first boat you came up here on?

A. First boat—must have been about 210 feet, I think.

Q. Did she have two hatches?

A. Yes.

Q. When you worked the after hatch on a star-board landing, how did you moor the stern?

A. We hauled the ship ahead.

Q. Did you keep out that after line? [656]

A. Yes.

Q. Did you move that up to the dock?

A. We run forward to this end of the dock.

Q. What did you do with the stern line?

A. Hauled the stern line in.

(Deposition of J. C. Hunter.)

Q. And moored her ahead? A. Yes.

Q. Now, do you know how far out the pier that you described extended from the cribbing?

A. No, I never measured it, sir.

Q. Well, what would be your idea?

A. I don't like to tell. As I say, I never measured from the beach, but the wharf was quite a ways out.

Q. You say there was a T on the face of the pier?

A. Yes.

Q. And how do you ascertain it at fifty or sixty feet—by comparing it with the length of the ship?

A. Yes, by comparing it with the length of the ship.

Q. How long did you say the ship was?

A. About two hundred and ten feet. The first one I came up here on, but only one trip on her.

Q. How frequently did you come up, Captain?

A. Once a month. I landed at the dock twice—from the south and coming from the westward.

Q. You always made a starboard landing?

A. Always made a starboard landing, yes. I very seldom made a port landing, except in case of a strong wind.

Q. How often on those trips did you work the after hatch instead of the forward hatch?

A. We were working the after hatch all the trips; it was always packed full of freight—always worked both hatches.

Q. So that the boat was anchored always to the stern line? [657] A. No, not always.

Q. But the long line that you say extended back to the beach you didn't use when you worked the after

(Deposition of J. C. Hunter.)

hatch? A. No, I hauled it in.

Q. And then you moored her to the dock?

A. The stern was abreast of the dock.

Q. You say that is what you do with big ships operating now? A. Yes, we are doing that now.

Q. How do you moor those?

A. Make fast to the shore line—that fish place down there (indicating).

Q. And you say it wouldn't have been possible to moor that boat without having out the stern line to the beach?

A. No, not with any degree of safety—might have held the ship there, but not with any safety.

Q. In other words, it was convenient?

A. It was necessary for safety to the ship. I forgot to say something about a side-wheeler I run up there. She had great big wheels on the sides and when I docked there, I couldn't dock the paddle-box on the face of the dock and I had to have the paddle-box on this side of the dock—couldn't reach the dock with the slings.

Q. What boat was that, the "Elder"?

A. No, the "Anchon," in '85. There was nothing to hold—

Q. Mr. Bayless asked you about a wharf site, what do you understand by a wharfsite?

A. It is simply a place where a wharf is built on.

Q. You don't consider in that all the face of the beach that the boat might extend across if a wharf doesn't cover that?

A. It is what it covers. That is what they say in

(Deposition of J. C. Hunter.)

Seattle. Where the dock is built.

Q. You say it took a hundred and twenty-five fathoms of line [658] to moor the stern of that first vessel of which you were master, to the beach, when the forward hatch lay alongside the wharf?

A. No; the line was a hundred and twenty-five fathoms long. It must have taken eighty to one hundred fathoms to reach the pile.

Q. I understood you to say that it was one hundred and twenty-five fathoms long and it took most of it.

A. The line is a hundred and twenty-five fathoms yes.

Q. Was this object to which you moored above or below high tide?

A. It must have been pretty near high water, because we had to use a boat sometimes.

Q. Did you ever take it along the beach at high water?

A. No, not at high water. Couldn't get it there during high water. We passed a small line—what we call a heaving line—up to the beach.

Q. You don't remember what that object was to which you moored? A. No, I don't.

Q. You don't know whether it was fixed there, or something that was there by reason of nature?

A. No, sir.

Q. When you made a port landing there, how did you moor the ship?

A. Just the same way—run a line from the stern up this end of the dock on the beach.

Q. Now, what were the lengths of the other ships

(Deposition of J. C. Hunter.)

in which you sailed up here between '83 and '92?

A. The "Alva," she was about 260 feet, I think.

Q. And the "Mexico"?

A. The "Mexico," she was about the same length. I don't think there was much difference in the two lengths. [659]

Q. Captain, when was the last time you moored at Murray & Carroll's wharf? A. '92.

Q. Have you ever landed there since in any boat or any vessel? A. No, sir, I have not.

Q. Have you ever examined that particular piece of ground before, since '92, until Mr. Bayless pointed out something down there this morning?

A. I was there a year ago looking to see if I could locate myself and I saw the cribbing underneath there. I couldn't tell from the beach. If that cribbing had been removed, I couldn't have told that the wharf was there.

Q. Between 1892 and a year ago, do you know anything about the ownership, use, or occupation of that piece of land to the south of Murray's wharf?

A. No, I couldn't tell. I have not had any occasion to land there since '98 and ever since have docked up here.

Q. Since '92 have you ever seen a seagoing vessel land at that dock, big seagoing vessel at that dock? Were you on, or have you seen, any other vessel at the old Murray wharf? A. No, I have not.

Q. You have been in here frequently since 1892?

A. Oh, yes, every ten or fourteen days since '98. I don't remember ever seeing any there. It was broke down.

(Deposition of J. C. Hunter.)

Q. There really hasn't been any wharf there since '98? A. No, only the cribbing.

Q. The old cribbing under the warehouse?

A. A few years ago there was more of it than there is now.

Q. Are you able to say at what particular point on the beach with reference to the old Murray-Carroll wharf you moored [660] that stern line or bow line? A. No, I couldn't.

Q. Are you sure it was always moored at the same point?

A. Always at the same place. There was nothing else to moor to at that particular spot.

Q. No trees up there on the beach?

A. No, everything was cut down. There were stumps there, but that was the one available for us.

Q. You are sure you always moored at the same stump? A. Yes.

Q. Well, I didn't mean to put in stump, but it answers the same purpose. Please state again, I think you have already stated it once, what was the condition of the beach on either side of the Murray and Carroll wharf with reference to its being used or occupied at that time by any person?

A. The beach was all full of boulders and sloping.

Q. On either side of the wharf? A. Yes.

Q. And what distance to the south?

A. Oh, the whole beach. We would often walk—go down to the slaughter-house, and there were lots of stones.

Q. Large boulders?

A. Yes, a couple hundred pounds, some of them.

(Deposition of J. C. Hunter.)

Q. Big rocks?

A. Yes, and big boulders. They moved them away on this side to make a pathway up to town.

Q. That is, on the north side? A. Yes.

Q. But nothing at all on the south side, no indication of use or occupancy? A. No.

Q. Nothing but boulders there? [661]

A. No, nothing but boulders there.

Redirect Examination.

(By Mr. BAYLESS.)

Q. Just a question or so. On account of the smallness of the face of the dock did you say it was necessary to run a line ashore?

A. Yes; I said for the safety of the vessel.

Q. Then it was necessary to use a portion of this beach? A. Yes, sir, certainly.

Q. To make fast with the line?

A. Yes, to make fast to the beach.

Q. That practice was followed by you?

A. Yes, and everybody that came after me. We had to do it, the very same thing. We used this particular spot, whatever it was, for universal use.

Q. All vessels that came up here?

Mr. GUNNISON.—Just a minute—confine it to his knowledge.

Q. Do you know whether or not all vessels used the same practice that you did?

A. I suppose they did. I can say only for myself. I should imagine they would, because there was no other way to hold a vessel.

Mr. GUNNISON.—We object to whatever the

(Deposition of J. C. Hunter.)

Captain imagines and any statement as to what he didn't do. What he knows would be competent. I move to strike that.

The COURT.—Objection overruled.

Mr. GUNNISON.—Exception.

Q. (By Mr. BAYLESS.) Was there any sign of occupancy on this [662] beach other than this pile, or what not, that you tied up to during that period of time?

A. No, I don't remember—I have seen boats there or a canoe.

Q. This beach on the other side of the dock?

A. Yes, on both sides.

Q. Between the years '83 and '92? A. Yes.

Q. That was the only use—for the mooring of these vessels, is that a fact?

A. Yes, as I remember. There might have been some boats tied up there while I was away, but, as I say, we never had any trouble getting a boat to run a line.

Q. That was the only occupancy of the beach?

A. Yes, except the slaughter-house.

Q. That was further down? A. Yes.

Q. And the beach between the Carroll Dock and this pile or post, wherever it was, was used in tying these vessels up? A. Yes, in tying the ships up.

Mr. BAYLESS.—That is all.

(By the COURT.)

Q. What was that thing you tied the ship up to?

A. I don't know whether it was a pile or a stump or what.

(Deposition of J. C. Hunter.)

Q. Who put it there? A. I can't tell you that.

Q. When was it put there?

A. It was there when I first come up.

Q. Were you the first one that came up for the Pacific Coast Company?

A. No, goodness sakes, no. Carroll was up here on the "Idaho."

Q. When did he first come up? [663]

A. In '81, I think.

Q. You first came in '83? A. Yes.

Q. Well, when you came up that object, whatever it was, was there?

A. It was there, yes; they told us that we could land there.

Q. You don't know who put it there?

A. No, but old man Webster said we could run a line over to there. He had a dinky there for that purpose.

Q. When you made fast from the bow, say you were headed up this way towards Juneau, was the angle that you run the line from the ship to the shore about the same angle that you would use from the stern to the shore?

A. When working the after hatchway it was.

Q. About a forty degree angle?

A. Yes, somewhere about that.

Q. A forty degree angle from the ship?

A. Yes.

Q. And generally it took about eighty fathoms of line? A. Yes, very nearly the whole thing.

Q. You don't know how far it was from the face of

(Deposition of J. C. Hunter.)

the dock to the shore?

A. No, I do not. It was quite a distance I remember, because when taking out freight we had to pay out so much—there was so much trucking to do, trucking to the warehouse.

Q. A hundred feet?

A. Yes, I think over a hundred feet from the warehouse to the edge of the dock.

The COURT.—That is all. [604]

Recross-examination.

(By Mr. GUNNISON.)

Q. How much of the beach did you take to moor the boat, any boat, more than the place where you fastened your line?

A. Yes, certainly. The line was way down at an angle, extending way down the beach.

Q. But you moored only in one place?

A. Only one place to moor.

Q. And you say that was necessary for the safety of the vessel in all kinds of weather? A. Yes, sir.

Q. When it was still, when there was no gale or no wind blowing, would it be necessary?

A. Yes, sir, because you couldn't hold the ship unless you had something to hold the stern up.

Q. Suppose your line ran toward the center from the stern?

A. There was nothing to make fast to.

Q. To the land end of the wharf, would that have held her?

A. No; that wouldn't have answered the purpose.

Q. You didn't use any other part of the beach for

(Deposition of J. C. Hunter.)

any purpose except the spot where your line was moored, did you?

A. Oh, yes, we used the beach when unloading cattle.

Q. And you sometimes used one side and sometimes the other?

A. Yes; usually had cattle in the after hold—you couldn't rush them—

Q. And dropped them overboard?

A. Yes; had a great big plank and then the cattle walked out and the plank gradually sank and they slid in nicely, and we had a line out from the dock to confine them. The first time—

Q. How many times did you bring cattle here in the course of a year? [665]

A. Every trip I come up, fifty or sixty heads.

Q. For Juneau? A. Yes.

Q. And landed them through the port that way?

A. Yes, through the port.

Q. Where did you moor that corral line?

A. To the beach.

Q. At the same point?

A. Yes, to the beach.

Q. But there was no structure there on that side of the beach? A. No, nothing at all.

Mr. GUNNISON.—I guess that is all.

Redirect Examination.

(By Mr. BAYLESS.)

Q. It was necessary to have this much beach between the dock and that pile or whatever it was for the purpose of landing your vessel?

(Deposition of J. C. Hunter.)

A. It was necessary to have that much space to hold the ship.

Q. You brought up cattle here on your trip in '83?

A. No, not '83. The ship I had in '83 couldn't carry cattle, but in '85 and '86, '87 and '88—there were three years on the George W. Elder.

Recross-examination.

(By Mr. GUNNISON.)

Mr. GUNNISON.—I would like to ask one more question, your Honor?

The COURT.—Proceed. [666]

Q. Suppose there had been structures along that beach how would you have landed then, Captain, you say you had to have all that space to land your boat?

A. We couldn't have landed there then. If there had been any other dock, would have had to haul ahead,—couldn't have landed my cattle.

Q. Suppose, take it when you wouldn't have cattle, suppose there were other things on the waterfront there, how would you have landed?

A. I had to have that space to get that line there. Couldn't have that line any other place.

Q. You say you had to have that beach for the purpose of landing; what part of the beach for the purpose of landing?

A. Well, when landing cattle we used the beach for the cattle to walk up on and had to have this pile.

Q. But you didn't do that in '83?

A. No, not in '83.

Q. When did you begin that? A. In '85.

(Deposition of J. C. Hunter.)

Q. 1885? A. Yes.

Q. You didn't use that beach for cattle in '83 or '84? A. Oh, no.

Q. And what other purpose did you use that beach for? A. Didn't use it for anything else.

Mr. GUNNISON.—That is all.

(Witness excused.)

I certify that the foregoing is a true and correct transcript of notes taken by me of deposition of J. C. Hunter taken on May 29, 1914, before Hon. R. W. Jennings, Judge of U. S. Dist. Court, First Division of Alaska.

H. F. BENSON,

Court Stenographer. [667]

[Endorsed]: No. 1024—A. Pacific Coast Co., Plaintiff, vs. George E. James and Edward Webster, Defendants. Deposition of Captain J. C. Hunter. Filed in the District Court, District of Alaska, First Division. Nov. 16, 1914. J. W. Bell, Clerk. By C. Z. Denny, Deputy. [668]

*In the District Court for the Territory of Alaska,
Division Number One, at Juneau.*

Court No. 1024—A.

PACIFIC COAST COMPANY,

Plaintiff,

vs.

GEORGE E. JAMES and EDWARD WEBSTER,
Defendants.

Stipulation [as to Taking of Deposition of John R. Mitchell, etc.].

It is hereby stipulated by and between respective counsel for the above-named plaintiff, the Pacific Coast Company and the above-named defendant, George E. James, that the deposition of John R. Mitchell of the City of Denver, State of Colorado, witness on behalf of said defendant in the above-entitled action, may be taken, before Alice Quinn, a Notary Public in and for the County of Denver, State of Colorado, at her office in said county and State, or before such other officer as may be designated by said defendant.

That upon service upon said plaintiff of a copy of the written direct interrogatories herewith, proposed to be propounded to said witness, the said plaintiff shall, within five days after receipt thereof, submit to the said defendant, its proposed cross-interrogatories, together with a copy thereof, proposed to be propounded to said witness; and that thereupon the original of said proposed direct and cross-interrogatories, together with a certificate, shall be attached to this stipulation, and thereupon forwarded to the said notary public for the taking of said deposition in accordance herewith; and after the taking [669] of the deposition of said witness, the same shall be returned, together with this stipulation, by United States mail, in a sealed envelope, to the clerk of the above-entitled court at Juneau, Alaska.

AND it is hereby stipulated that all objections to

the giving of the statutory notice of the taking of the deposition and nonissuance of a commission out of said court, shall be and is hereby waived.

AND when so taken, the said deposition may be used in the trial of said action subject to the same objections except as to the form of interrogatories as if the said witness was there personally present and testifying therein.

Dated at Juneau, Alaska, this 20 day of May, 1914

SHACKLEFORD & BAYLESS,

Attorneys for Plaintiff.

GUNNISON & ROBERTSON,

Attorneys for Defendant, George E. James.

[Endorsed]: Court No. 1024—A. In the District Court for the Territory of Alaska, Division No. One, at Juneau. Pacific Coast Company, Plaintiff, vs. George E. James and Edward Webster, Defendants. Stipulation. Gunnison & Robertson, Attorneys at law, Juneau, Alaska. [670]

*In the District Court for the Territory of Alaska,
Division Number One, at Juneau.*

Court No. 1024—A.

PACIFIC COAST COMPANY,

Plaintiff,

vs.

GEORGE E. JAMES and EDWARD WEBSTER,
Defendants.

Direct Interrogatories to be Propounded to John R. Mitchell.

Interrogatories to be propounded to John R. Mitchell, of the City of Denver, in the State of Colorado, a witness to be produced, sworn and examined on the part of the above-named defendant, George E. James, before Alice Quinn, of the City of Denver, State of Colorado:

Direct Interrogatory No. 1: Please state your name, occupation, present residence and whether or not you are more than twenty-one years of age.

Direct Interrogatory No. 2: State whether or not you ever lived at Juneau, in the Territory of Alaska.

Direct Interrogatory No. 3: If your answer to the last preceding interrogatory is in the affirmative, please state what, if any, business concern you were connected with in Juneau or vicinity, and in what capacity.

Direct Interrogatory No. 4: Please state during what years you were connected with the said business concern in said capacity at Juneau, set forth in your last preceding answer.

Direct Interrogatory No. 5: State whether or not you were generally acquainted with the waterfront at Juneau during the time that you resided in said city.

Direct Interrogatory No. 6: If your answer to interrogatory No. 5 is in the affirmative, state whether or not you know the location of the old Carroll wharf which was one time used as a fish or saltery house and later used by one George F. Forrest for the pur-

poses of the Juneau Iron Works.

Direct Interrogatory No. 7: If your answer to interrogatory No. 6 is in the affirmative, state whether or not during your residence in said city, you were acquainted with that portion of the beach or waterfront extending south from said Carroll wharf, [671] 300 or 400 feet to what was known as the C. W. Young wharf or float.

Direct Interrogatory No. 8: Did you know George E. James, a man who conducted a sawmill at Douglas, Alaska, while you resided in Juneau?

Direct Interrogatory No. 9: Please state whether or not you, on behalf of the concern with which you were connected, ever had any business dealings with said George E. James, and, if so, state what those business dealings were.

Direct Interrogatory No. 10: If your answer to interrogatory No. 9 is in the affirmative, please state, if you know, whether or not, a portion of the waterfront or tide lands at Juneau was used in said transactions.

Direct Interrogatory No. 11: If your answer to interrogatory No. 10 is in the affirmative, please state, as near as you can recollect, the particular portion of waterfront or tide lands which was used in carrying out the said business dealings, and fully describe the same.

Direct Interrogatory No. 12: Please state whether or not there were any structures on that piece of waterfront described in your answer to interrogatory No. 11, as having been used in the course of said business dealings; and, if you say any such struc-

tures existed, please describe them fully.

Direct Interrogatory No. 13: Please state, if you recollect, the year and the approximate month in which the city of Juneau decked and planked the street passing said above-mentioned waterfront which you stated was used in the course of said business dealings.

Direct Interrogatory No. 14: Please state whether there was any connection between said street and the structures located on said waterfront, if you answered that there were structures on said waterfront, and answered that said waterfront was used; and, if you say there was such a connection, please describe it fully.

Direct Interrogatory No. 15: Please state, if you answered that there were structures on the waterfront which you say were used in said business dealings, how you obtained access to the same from the upland or from the street, if you did have access to the said structures from either the upland or the street.

Direct Interrogatory No. 16: If you answered that there were any structures on said piece of waterfront that they were used in the course of said business dealings, state whether or not the company by which you were employed had any interest in the same. [672]

Direct Interrogatory No. 17: If you answered that there were structures on that piece of waterfront used in the course of said business dealings, under whose authority or acquiescence did you use the same; and who, so far as you know, caused the said

structures to be built and erected on said waterfront.

Direct Interrogatory No. 18: Did any company with which you were connected own and use a scow in Juneau or vicinity during the time you were connected with said company?

Direct Interrogatory No. 19: If your answer to interrogatory No. 18 is in the negative, please state whether or not you, on behalf of the company with which you were so connected ever had occasion to use a scow at Juneau, in the course of any business dealings with the hereinbefore mentioned George E. James, defendant in this case.

Direct Interrogatory No. 20: If your answer to interrogatory No. 19 is in the affirmative, please state from whom you obtained said scow.

Direct Interrogatory No. 21: If your answer to interrogatory No. 19 is in the affirmative, please state what those particular business dealings were and describe them fully.

Direct Interrogatory No. 22: If your answer to interrogatory No. 19 is in the affirmative, please state for what purpose the said scow was used.

Direct Interrogatory No. 23: If your answer to interrogatory No. 19 is in the affirmative, please state between what towns or camp or places the said scow was used.

Direct Interrogatory No. 24: If your answer to interrogatory No. 19 is in the affirmative, and if you have further answered that Juneau was one of the places where said scow was used, please describe the particular portion of the said waterfront at Juneau on which said scow was landed, if the said scow was

landed at some place on the waterfront at Juneau.

Direct Interrogatory No. 25: If in your answer to interrogatory No. 24 is in the affirmative, state whether or not the particular piece of waterfront upon which said scow was landed was the same piece of waterfront upon which was situated the structure to which you refer to in your answer to interrogatory No. 12, if you answered that interrogatory affirmatively. [672½]

Direct Interrogatory No. 26: If there is anything further that occurs to your mind relative to the business dealings and transactions between you and Mr. James in regard to the use of said waterfront, please state the same fully, to the best of your recollection.

Interrogatory No. 27: State the year and month that you came to Juneau and took charge of said business concern referred to hereinbefore.

Direct Interrogatory No. 28: State whether or not, on your arrival at Juneau and taking charge of said business concern, the said concern was using a gridiron on the waterfront of Juneau for any purpose.

Direct Interrogatory No. 29: If your answer to interrogatory No. 28 is in the affirmative, describe as nearly as possible the situs or location of said gridiron on said waterfront.

Direct Interrogatory No. 30: If your answer to interrogatory No. 28, is in the affirmative, state the purpose for which said gridiron was used.

Direct Interrogatory No. 31: If your answer to interrogatory No. 28 is in the affirmative, state when you discontinued the use of said gridiron.

Direct Interrogatory No. 32: If your answer to interrogatory No. 28 is in the affirmative, describe as accurately as possible the manner in which said gridiron was constructed.

Direct Interrogatory No. 33: If your answer to interrogatory No. 28 is in the affirmative, state what was done with the materials of which the gridiron was constructed after you ceased to use the gridiron.

[Endorsed]: Court No. 1024—A. In the District Court for the Territory of Alaska, Division No. One, at Juneau. Pacific Coast Company, Plaintiff, vs. George E. James and Edward Webster, Defendants. Direct Interrogatories to be Propounded to John R. Mitchell. Gunnison & Robertson, Attorneys at Law, Juneau, Alaska. [673]

In the District Court for the District of Alaska, Division Number 1 at Juneau.

No. 1024—A.

PACIFIC COAST COMPANY, a Corporation,
Plaintiff,

vs.

GEORGE E. JAMES and EDWARD WEBSTER,
Defendants.

Cross-Interrogatories to be Propounded to John R. Mitchell.

Cross-Interrogatory No. 1: When did you first become acquainted with the old Carroll wharf and wharf site and how frequently had you occasion to visit it during your residence in Juneau?

Cross-Interrogatory No. 2: When did you first be-

come acquainted with that portion of the beach or waterfront mentioned in direct interrogatory No. 7 and how frequently did you have occasion to visit it during your residence in Juneau?

Cross-Interrogatory No. 3: If you have answered direct interrogatory No. 10 in the affirmative, please give the date of such transactions mentioned therein.

Cross-Interrogatory No. 4: If you have answered direct interrogatory No. 12 in the affirmative, please state who erected such structure or structures and by whom or for whom the same were occupied and were the said structures erected or occupied by any person or corporation adversely to the Pacific Coast Company. If so, by whom or what corporation and when such adverse claim was made. [674]

Cross-Interrogatory No. 5: If you have answered direct interrogatory No. 26 in the affirmative, please give the dates of the business dealings and transactions therein referred to.

Cross-Interrogatory No. 6: Did you have on behalf of the Alaska Perseverance Mining Company any negotiations with the Pacific Coast Company with reference to using or occupying a portion of the tide lands between the old Carroll-Murray wharf and the C. W. Young wharf, and if so, please state in detail what those negotiations consisted of and with whom you negotiated and what the result was?

Cross-Interrogatory No. 7: Did you have on behalf of the Alaska Perseverance Mining Company any negotiations with either Charles E. Davidson, as receiver of the Willson-Sylvester Estate at Wrangell or with the Joshua-Hendy Iron Works of San Fran-

cisco with reference to using or occupying a portion of the tide lands between the old Carroll-Murray wharf and the C. W. Young wharf? If so, please state in detail what those negotiations consisted of, with whom you negotiated, and what the result was.

Cross-Interrogatory No. 8: Did the Alaska Perseverance Mining Company use or occupy for any purpose any portion of such tide lands?

Cross-Interrogatory No. 9: Did any person or corporation use or occupy for any purpose on behalf of the Alaska Perseverance Mining Company any portion of such tide land? [675]

Cross-Interrogatory No. 10: If you have answered either or both of cross-interrogatories Nos. 8 and 9 in the affirmative, please state which portion of the said tide lands was so used or occupied and for what period of time, giving the dates, if possible, and please state whether such premises were so used or occupied under permission or lease from either the Pacific Coast Company or George E. James.

Cross-Interrogatory No. 11: Did the Alaska Perseverance Mining Company have an arrangement with Joshua Hendy Iron Works or with the Wrangell Sawmill with reference to the furnishing of lumber, materials, and supplies for the construction of the Perseverance mill?

Cross-Interrogatory No. 12: If so, please state in detail with whom such arrangement was made, the terms of said arrangement and whether the terms were written or verbal.

Cross-Interrogatory No. 13: If you have answered cross-interrogatory No. 12 in the affirmative, please

state if any portion of the said tide lands were used or occupied in connection with such arrangement.

Cross-Interrogatory No. 14: If you have answered cross-interrogatory No. 13 in the affirmative, please state what portion of said tide lands was so used or occupied and for what period of time, giving dates if you are able.

Cross-Interrogatory No. 15: Did you have any correspondence with the Pacific Coast Company with reference to the use and occupation by the Alaska Perseverance Mining Company of said tide lands? If so, please attach the same to your deposition, properly marked for identification. [676] If after making a diligent search you are unable to find such correspondence, please state the substance of such correspondence, and the result obtained therefrom.

Cross-Interrogatory No. 16: Did you have any correspondence with Charles E. Davidson, as receiver of the Willson-Sylvester Estate at Wrangell, Alaska, with reference to the occupation and use of said tide lands? If so, please attach such correspondence to your deposition properly marked for identification. If after making a diligent search for the same you are unable to find such correspondence, please state the substance of such correspondence, and the result obtained therefrom.

Cross-Interrogatory No. 17: During the period of your residence in Juneau, did you know of any claim being made by George E. James adverse to the Pacific Coast Company in the tide lands in dispute in this case? If so, please state when you first became aware of such adverse claim and how frequently you

heard the same made by Mr. James. Also please state the particular portion of said tide lands to which Mr. James laid such adverse claim.

SHACKLEFORD & BAYLESS,

Attorneys for Plaintiff.

[Endorsed]: Original No. 1024—A. In the District Court for the District of Alaska, Division No. 1, at Juneau. Pacific Coast Company, a Corporation, Plaintiff, vs. George E. James and Edward Webster, Defendants. Cross-interrogatories to be Propounded to John R. Mitchell. Shackleford & Bayless, Attorneys for Plaintiff. Office, Juneau, Alaska. [677]

*In the District Court for the Territory of Alaska,
Division No. One, at Juneau.*

Court No. 1024—A.

PACIFIC COAST COMPANY,

Plaintiff,

vs.

GEORGE E. JAMES and EDWARD WEBSTER,
Defendants.

Deposition of John R. Mitchell.

State of Colorado,

City and County of Denver,—ss.

Direct Interrogatory No. 1: Please state your name, occupation, present residence and whether or not you are more than twenty-one years of age.

Answer. John R. Mitchell mining; 2630 Franklin St., Denver, Colorado; yes.

Direct Interrogatory No. 2: State whether or not

(Deposition of John R. Mitchell.)

you ever lived at Juneau, in the Territory of Alaska.

Answer. Yes.

Direct Interrogatory No. 3: If your answer to the last preceding interrogatory is in the affirmative, please state what, if any business concern you were connected with in Juneau or vicinity, and in what capacity.

Answer. Superintendent of the Alaska Perseverance and Alaska Gastineau Mining Company.

Direct Interrogatory No. 4: Please state during what years you were connected with the said business concern in said capacity at Juneau, set forth in your last preceding answer.

Answer. From July, 1905, to November, 1911.

[678]

Direct Interrogatory No. 5: State whether or not you were generally acquainted with the waterfront at Juneau during the time that you resided in said city.

Answer. Yes.

Direct Interrogatory No. 6: If your answer to interrogatory No. 5 is in the affirmative, state whether or not you know the location of the old Carroll wharf which was one time used as a fish or saltery house and later used by one George F. Forrest for the purposes of the Juneau Iron Works.

Answer. Yes.

Direct Interrogatory No. 7: If your answer to interrogatory No. 6 is in the affirmative, state whether or not during your residence in said city, you were acquainted with that portion of the beach or water-

(Deposition of John R. Mitchell.)

front extending south from said Carroll wharf, 300 or 400 feet to what was known as the C. W. Young wharf or float.

Answer. Yes.

Direct Interrogatory No. 8: Did you know George E. James, a man who conducted a sawmill at Douglas, Alaska, while you resided in Juneau?

Answer. Yes.

Direct Interrogatory No. 9: Please state whether or not you, on behalf of the concern with which you were connected, ever had any business dealings with said George E. James, and, if so, state what those business dealings were?

Answer. The Alaska Gastineau and Alaska Perseverance Companies bought lumber from George E. James from 1908 to 1911. James delivered it on a scow to a slip near the old fish house referred to in question number six (6).

Direct Interrogatory No. 10: If your answer to interrogatory No. 9 is in the affirmative, please state, if you know, whether or not, a portion of the waterfront or tide lands at Juneau was used in said transactions.

Answer. George E. James delivered the lumber on a scow; we unloaded the lumber from the scow to the Alaska Perseverance Companies wagons.

Direct Interrogatory No. 11: If your answer to interrogatory No. 10 is in the affirmative, please state as near as you can recollect, the particular portion of waterfront or tide lands which was used in carrying

(Deposition of John R. Mitchell.)

out the said business dealings, and fully describe the same.

Answer. There was a gridiron built at a point near the old fish house; it was somewhere between 100 and 500 feet below the fish house, that is, towards the city wharf. [679]

Direct Interrogatory No. 12: Please state whether or not there were any structures on that piece of waterfront described in your answer to interrogatory No. 11, as having been used in the course of said business dealings; and, if you say any such structures existed, please describe them fully.

Answer. The structure on this piece of property consisted of the gridiron for the scow to rest on during low water, some long piles to which the scow was tied, a plank road about 12 feet wide from the gridiron to the street. The gridiron was 10 or 12 feet vertical below the level of the street. The approach from the gridiron to the street was on an incline.

Direct Interrogatory No. 13: Please state, if you recollect, the year and the approximate month in which the city of Juneau decked and planked the street passing said above-mentioned waterfront which you stated was used in the course of said business dealings.

Answer. It was in the summer or fall of 1906.

Direct Interrogatory No. 14: Please state whether there was any connection between said street and the structures located on said waterfront, if you answered that there were structures on said waterfront, and answered that said waterfront was used; and, if

(Deposition of John R. Mitchell.)

you say there was such a connection, please describe it fully.

Answer. The gridiron was 20 or 40 feet south of the street and 10 feet or more lower than the street.

Direct Interrogatory No. 15: Please state, if you answered that there were structures on the waterfront which you say were used in said business dealings, how you obtained access to the same from the upland or from this street, if you did have access to the said structure from either the upland or the street.

Answer. There was a planked incline road leading from the main street down to the gridiron.

Direct Interrogatory No. 16: If you answered that there were any structures on said piece of waterfront that *that* they were used in the course of said business dealings, state whether or not the company by which you were employed had any interest in the same.

Answer. No.

Direct Interrogatory No. 17: If you answered that there were structures on that piece of waterfront used in the course of said business dealings, under whose authority or acquiescence did you use the same, and who, so far as you know, caused the said structures to be built and erected on said waterfront.

Answer. So far as I know, James had the gridiron and road leading to it built. [680]

Direct Interrogatory No. 18: Did any company with which you were connected own and use a scow in Juneau or vicinity during the time you were connected with said company?

(Deposition of John R. Mitchell.)

Answer. The Alaska Perseverance or Alaska Gastineau Companies did not own a scow while I was superintendent.

Direct Interrogatory No. 19: If your answer to interrogatory No. 18 is in the negative, please state whether or not you, on behalf of the company with which you were so connected ever had occasion to use a scow at Juneau, in the course of any business dealings with the hereinbefore mentioned George E. James, defendant in this case.

Answer. I once borrowed a scow from George E. James.

Direct Interrogatory No. 20: If your answer to interrogatory No. 19 is in the affirmative, please state from whom you obtained said scow.

Answer. George E. James.

Direct Interrogatory No. 21: If your answer to interrogatory No. 19 is in the affirmative, please state what those particular business dealings were and describe them fully.

Answer. The Alaska Perseverance Mining Company had a gas engine and gas producer at Juneau, this was loaded on a scow at the George E. James' gridiron and taken to Sheep Creek, the scow used was borrowed from George E. James.

Direct Interrogatory No. 22: If your answer to interrogatory No. 19 is in the affirmative, please state for what purpose the said scow was used.

Answer. To take the said gas engine and gas producing plant.

Direct Interrogatory No. 23: If your answer to in-

(Deposition of John R. Mitchell.)

terrogatory No. 19 is in the affirmative, please state between what towns or camp or places the said scow was used.

Answer. From Juneau to Indian John's camp near Sheep Creek.

Direct Interrogatory No. 24: If your answer to interrogatory No. 19 is in the affirmative, and if you have further answered that Juneau was one of the places where said scow was used, please describe the particular portion of the said waterfront at Juneau on which said scow was landed, if the said scow was landed at some place on the waterfront at Juneau.

Answer. The scow was on the James' gridiron near the old fish house when the machinery was loaded.
[681]

Direct Interrogatory No. 25: If your answer to interrogatory No. 24 is in the affirmative, state whether or not the particular piece of waterfront upon which said scow was landed was the same piece of waterfront upon which was situated the structure to which you refer to in your answer to interrogatory No. 12, if you answered that interrogatory affirmatively.

Answer. Yes.

Direct Interrogatory No. 26: If there is anything further that occurs to your mind relative to the business dealings and transactions between you and Mr. James in regard to the use of said waterfront, please state the same fully, to the best of your recollection.

Answer. Mr. James was supplying the Alaska Perseverance Mining Company with the lumber to build the engine-house at Sheep Creek John's Cabin and

(Deposition of John R. Mitchell.)

was delivering the lumber there, and we had the use of his scow to move the machinery from Juneau to Sheep Creek.

Direct Interrogatory No. 27: State the year and month that you came to Juneau and took charge of said business concern referred to hereinbefore.

Answer. I came to Juneau near the end of June, 1905; took charge of the Alaska Perseverance on 1st of July, 1905.

Direct Interrogatory No. 28: State whether or not, on your arrival at Juneau and taking charge of said business concern, the said concern was using a gridiron on the waterfront of Juneau for any purpose.

Answer. Yes.

Direct Interrogatory No. 29: If your answer to interrogatory No. 28 is in the affirmative, describe as nearly as possible the situs or location of said gridiron on said waterfront.

Answer. It was 100 feet or more from the fish house.

Direct Interrogatory No. 30: If your answer to interrogatory No. 28 is in the affirmative, state the purpose for which said gridiron was used.

Answer. The Joshua Hendy Company, of San Francisco, had a contract to build a stamp-mill for the Alaska Perseverance Mining Company. The Hendy Company bought the lumber for the mill at Wrangle. The Lumber was brought from Wrangle to Juneau in scows and unloaded on this gridiron. This gridiron was higher than the gridiron that James afterward built. The top of the Hendy grid-

(Deposition of John R. Mitchell.)

iron was supposed to be on the level of the mean high tide; the top of the James gridiron was about half tide.

Direct Interrogatory No. 31: If your answer to interrogatory No. 28 is in the affirmative, state when you discontinued the use of said gridiron.

Answer. In the spring or summer of 1906, the lumber and poles used in construction were hauled to the Alaska Perseverance mine and used there. [682]

Direct Interrogatory No. 32: If your answer to interrogatory No. 28 is in the affirmative, describe as accurately as possible the manner in which said gridiron was constructed.

Answer. There were poles sunk from 1 to 3 feet in the sand and 10"x12" stringers spiked to the poles, I am not sure of the dimensions of the stringers. I think that there were 4 sets of stringers each 40' or 60' long. There was no decking on these stringers. The lumber unloaded from the scows was rolled crosswise on to these stringers. The top of the stringers was a little lower than the high spring tides.

Direct Interrogatory No. 33: If your answer to interrogatory No. 28 is in the affirmative, state what was done with the materials of which the gridiron was constructed after you ceased to use the gridiron.

Answer. In the spring of 1906 the Alaska Perseverance Mining Company took over from the Hendy Company all the lumber and material that they had delivered in Juneau. In the fall of 1906 the Alaska Perseverance Company having no further use for the gridiron, they had it taken down and

hauled the poles and timber to their mines in Silver Bow Basin.

JOHN R. MITCHELL,

Witness.

Certificate of Notary.

State of Colorado,

City and County of Denver,—ss.

I, Alice Quinn, a Notary Public in and for said City and County of Denver, State of Colorado, do hereby certify that, before proceeding to the examination, the witness, John R. Mitchell, in the foregoing deposition named, was by me sworn to tell the truth, the whole truth and nothing but the truth in said cause; that said deposition was taken by me at my office in the City and County of Denver, and State of Colorado, on the sixth day of June, A. D. 1914, between the hours of 9:30 A. M. and 3:30 P. M., of said day, in accordance with the annexed stipulation; that said deposition was reduced to writing by me, and when completed was by me carefully read to said witness and being by him corrected, was by him subscribed in my presence.

IN WITNESS WHEREOF, I have hereunto subscribed my [683] hand and affixed my official seal, this Eighth day of June, A. D. 1914.

[Seal]

ALICE QUINN,

Notary Public in and for the City and County of Denver, State of Colorado.

My commission expires on the 1st day of May,
A. D. 1917.

Direct Interrogatories.....\$ 8.25

Cross-interrogatories 4.25

Total.....\$12.50

[684]

*In the District Court for the District of Alaska,
Division No. 1, at Juneau.*

No. 1024-A.

PACIFIC COAST COMPANY, a Corporation,
Plaintiff,

vs.

GEORGE E. JAMES and EDWARD WEBSTER,
Defendants.

Deposition of John R. Mitchell.

State of Colorado,

City and County of Denver,—ss.

Cross-interrogatory No. 1: When did you first become acquainted with the old Carroll wharf and wharf site and how frequently had you occasion to visit it during your residence in Juneau?

Answer. Some time about the 1st of July, 1905. Thomas & Co. used it at that time as a fish house. I visited it several times in 1905 and 1906; some years afterwards it was used as a glove factory and afterwards by the Juneau Iron Works, with whom I did business for the Alaska Perseverance and Alaska Gastineau Companies.

(Deposition of John R. Mitchell.)

Cross-interrogatory No. 2: When did you first become acquainted with that portion of the beach or waterfront mentioned in direct interrogatory No. 7, and how frequently did you have occasion to visit it during your residence in Juneau?

Answer. On the 1st of July, 1905. From the 1st of July, 1905 to November, 1905, I had occasion to visit it two or three times a week. I was well acquainted with that piece of waterfront during my residence in Juneau.

Cross-interrogatory No. 3: If you have answered direct interrogatory No. 10 in the affirmative, please give the dates of such transactions mentioned therein.

Answer. The Alaska Perseverance Company bought lumber from George E. James in 1908 and up to the year 1911.

Cross-interrogatory No. 4: If you have answered direct interrogatory No. 12 in the affirmative, please state who erected such structure or structures and by whom or for whom the same were occupied and were the said structures erected or occupied by any person or corporation adversely to the Pacific Coast Company. If so, by whom or what corporation [685] and when such adverse claim was made.

Answer. Mr. George E. James erected the structures at least he told me he did when the Alaska Perseverance Mining Company contracted for some lumber from him. I do not know, neither did I enquire if Mr. James had permission from any corporation to erect such structures.

Cross-interrogatory No. 5: If you have answered

(Deposition of John R. Mitchell.)

direct interrogatory No. 26 in the affirmative, please give the dates of the business dealings and transactions therein referred to.

Answer. It was in the spring of 1909, probably March or April month.

Cross-interrogatory No. 6: Did you have on behalf of the Alaska Perseverance Mining Company any negotiations with the Pacific Coast Company with reference to using or occupying a portion of the tide lands between the old Carroll-Murray wharf and the C. W. Young wharf, and if so please state in detail what those negotiations consisted of and with whom you negotiated and what the result was.

Answer. In 1907 the Alaska Perseverance Mining Company rented a portion of the City wharf and at that time the Pacific Coast Company offered to lease a portion of the Carroll wharf site to the Alaska Perseverance Company. I had a talk with Messrs. Swan and Pinneo, I think it was in 1906 or spring of 1907. It was a parcel about 100 feet wide adjoining Chief Johnson's house.

Cross-interrogatory No. 7. Did you have on behalf of the Alaska Perseverance Mining Company any negotiations with either Charles E. Davidson, as received of the Willson-Sylvester Estate at Wrangell or with the Joshua-Hendy Iron Works of San Francisco with reference to using or occupying a portion of the tide lands between the old Carroll-Murray wharf and the C. W. Young wharf? If so, please state in detail what those negotiations con-

(Deposition of John R. Mitchell.)

sisted of, with whom you negotiated and what the result was.

Answer. I do not recollect any transactions with any of the parties mentioned.

Cross-interrogatory No. 8: Did the Alaska Perseverance Mining Company use or occupy for any purpose a portion of such tide lands?

Answer. Not that I know of.

Cross-interrogatory No. 9: Did any person or corporation use or occupy for any purpose on behalf of the Alaska Perseverance Mining Company any portion of such tide land?

Answer. At the time I took charge of the Alaska Perseverance Mining Company property in July, 1905, the Joshua Hendy Machine Company had a contract to build a stamp mill in Silver Bow Basin for the Alaska Perseverance Mining Co. The Hendy Co. were to supply all machinery and lumber to Juneau. The Alaska Perseverance Company were to haul the said lumber and machinery to the Silver Bow Basin. The Joshua Hendy Company bought the [686] lumber at Wrangle and delivered it on a gridiron erected on these tide lands, from which the Alaska Perseverance teams hauled the lumber to the Basin.

Cross-interrogatory No. 10: If you have answered either or both of cross-interrogatories Nos. 8 and 9 in the affirmative, please state which portion of the said tide lands was so used or occupied and for what period of time, giving the dates, if possible, and please state whether such premises were so used or

(Deposition of John R. Mitchell.)

occupied under permission or lease from either the Pacific Coast Company or George E. James.

Answer. On July 1st, 1905, the Joshua Hendy Company had lumber on the gridiron referred to. It was sometime in the fall of 1906 that the gridiron was taken away by the Alaska Perseverance Mining Company. I have no recollection of ever seeing any permission or lease of the lands to Hendy Co. or the Alaska Perseverance Co.

Cross-interrogatory No. 11: Did the Alaska Perseverance Mining Company have an arrangement with Joshua Hendy Iron Works or with the Wrangell sawmill with reference to the furnishing of lumber, materials and supplies for the construction of the Perseverance mill?

Answer. The Joshua Hendy Company had a contract from the Alaska Perseverance Company to build a stamp mill as stated in Cross-interrogatory No. 9.

Cross-interrogatory No. 12: If so, please state in detail with whom such an arrangement was made, the terms of said arrangement and whether the terms were written or verbal.

Answer. The Joshua Hendy Iron Works brought the lumber for the construction of a part of the Perseverance mill from the Wrangel sawmill. I do not know what the terms were, it was a matter between the Joshua Hendy Iron Works and the receiver of the Wrangle sawmill.

Cross-interrogatory No. 13: If you have answered cross-interrogatory No. 12 in the affirmative, please

(Deposition of John R. Mitchell.)

state if any portion of the said tide lands were used or occupied in connection with such arrangement.

Answer. The lumber from the Wrangle sawmill was unloaded on a gridiron situate between one hundred and four hundred feet down the channel from the Carroll wharf.

Cross-interrogatory No. 14: If you have answered cross-interrogatory No. 13 in the affirmative, please state what portion of said tide lands was so used or occupied and for what period of time, giving dates if you are able.

Answer. The gridiron was composed of poles set in the sand on top of which were stringers of heavy timbers. I think it was 30 to 40 feet wide and 40 to 60 feet in length. Its length was at right angles to the shore line. [687]

Cross-interrogatory No. 15: Did you have any correspondence with the Pacific Coast Company with reference to the use and occupation by the Alaska Perseverance Mining Company of said tide lands? If, so, please attach the same to your deposition, properly marked for identification. If after making a diligent search you are unable to find such correspondence, please state the substance of such correspondence and the result obtained therefrom.

Answer: I have no correspondence with the Pacific Coast Company and I do not recollect the substance if there was any correspondence.

Cross-interrogatory No. 16: Did you have any correspondence with Charles E. Davidson as receiver of the Willson-Sylvester Estate at Wrangell, Alaska,

(Deposition of John R. Mitchell.)

with reference to the occupation and use of said tide lands? If so, please attach such correspondence to your deposition properly marked for identification. If after making a diligent search for the same you are unable to find such correspondence, please state the substance of such correspondence and the result obtained therefrom.

Answer: I have no recollection of ever having any correspondence with Charles E. Davidson as receiver of the Willson-Sylvester Estate.

Cross-interrogatory No. 17: During the period of your residence in Juneau did you know of any claim being made by George E. James adverse to the Pacific Coast Company in the tide lands in dispute in this case? If so, please state when you first became aware of such adverse claim and how frequently you heard the same made by Mr. James. Also please state the particular portion of said tide lands to which Mr. James laid such adverse claim.

Answer. I do not remember of having heard of any such claim during my residence in Juneau.

JOHN R. MITCHELL,

Witness.

Certificate of Notary.

State of Colorado,

City and County of Denver,—ss.

I, Alice Quinn, a Notary Public in and for said City and County of Denver, State of Colorado, do hereby certify that, before proceeding to the examination, the witness, John R. Mitchell, in the foregoing deposition named, was by me sworn to tell the

truth, the whole truth and [688] nothing but the truth in said cause; that said deposition was taken by me at my office in the City and County of Denver, and State of Colorado, on the Sixth day of June, A. D. 1914, between the hours of 9:30 A. M. and 3:30 P. M., of said day, in accordance with the annexed stipulation; that said deposition was reduced to writing by me, and when completed was by me carefully read to said witness; and being by him corrected, was by him subscribed in my presence.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed my official seal, this Eighth day of June, A. D. 1914:

[Seal]

ALICE QUINN,

Notary Public in and for the City and County of Denver, State of Colorado.

My commission expires on the 1st day of May, A. D. 1917.

Cross-interrogatories\$ 4.25

Direct Interrogatories\$ 8.25

Total.....\$12.50

[Endorsed]: Court No. 1024-A. In the District Court for the Territory of Alaska, Division No. One, at Juneau. Pacific Coast Company, Plaintiff, vs. George E. James and Edward Webster, Defendants. Stipulation Direct and Cross-interrogatories Propounded to John R. Mitchell, and Answers of John R. Mitchell Thereto, and Certificate of Notary Public. Gunnison & Robertson Attorneys-at-law, Juneau, Alaska. Filed in the District Court, District

of Alaska, First Division, Jun. 25, 1914. J. W. Bell,
Clerk. By J. J. Clarke, Deputy. [689]

*In the District Court for the Territory of Alaska
Division Number One, at Juneau.*

Court No. 1024-A.

Pacific Coast Company,

Plaintiff,

vs.

GEORGE E. JAMES and EDWARD WEBSTER,

Defendants.

Stipulation.

It is hereby stipulated by and between respective counsel for the above-named plaintiff, the Pacific Coast Company and the above-named defendant, George E. James, that the deposition of T. A. Harper, of the city of Dundee, State of Oregon, witness on behalf of said defendant in the above-entitled action, may be taken before G. A. Dearborn, a Notary Public in and for the County of Yamhill, State of Oregon, at his office in said county and State, or before such other officer as may be designated by said defendant.

That upon service upon said plaintiff a copy of the written direct interrogatories herewith, proposed to be propounded to said witness, the said plaintiff shall, within five days after receipt thereof, submit to the said defendant, its cross-interrogatories, together with a copy thereof proposed to be propounded to said witness; and that thereupon the

original of said proposed direct and cross-interrogatories, together with a certificate, shall be attached to this stipulation, and thereupon forwarded to the said notary public for the taking of said deposition in accordance herewith, and after the taking [690] of the deposition of said witness, the same shall be returned, together with this stipulation, by United States mail, in a sealed envelope, to the clerk of the above-entitled court at Juneau, Alaska.

AND it is hereby stipulated that all objection to the giving of the statutory notice of the taking of the deposition and nonissuance of a commission out of said court, shall be and is hereby waived.

And when so taken, the said deposition may be used in the trial of said action subject to the same objections except as to the form of interrogatories as if the said witness was there personally present and testifying therein.

Dated at Juneau, Alaska, May 20, 1914.

SHACKLEFORD & BAYLESS,

Attorneys for Plaintiff.

GUNNISON & ROBERTSON,

Attorneys for Defendant, George E. James.

[Endorsed]: Court No. 1024-A. In the District Court for the Territory of Alaska, Division No. One, at Juneau. Pacific Coast Company, Plaintiff, vs. George E. James and Edward Webster, Defendants. Stipulation. Gunnison & Robertson, Attorneys-at law, Juneau, Alaska. [691]

*In the District Court for the Territory of Alaska,
Division Number One, at Juneau.*

Court No. 1024-A.

PACIFIC COAST COMPANY, a Corporation,
Plaintiff,

vs.

GEORGE E. JAMES and EDWARD WEBSTER,
Defendants.

Deposition of T. A. Harper.

State of Oregon,
County of Yamhill,—ss.

Direct Interrogatory No. 1: Please state your name, occupation, present residence and whether or not you are more than twenty-one years of age.

Answer: Theodore Acland Harper. Fruit-grower. Dundee, Yamhill County, Oregon. I am more than twenty-one years of age.

Direct Interrogatory No. 2: State whether or not you ever lived at Juneau, in the Territory of Alaska.

Answer: I did.

Direct Interrogatory No. 3: Please state what, if any, business you were connected with in Juneau, or vicinity, and in what capacity.

Answer: Alaska Treasure Gold Mining Company, as General Manager.

Direct Interrogatory No. 4: Please state during what years you were connected with the said business concern in said capacity, at Juneau, set forth in your last preceding answer.

Answer: May, 1910, to December, 1911.

Direct Interrogatory No. 5: State whether or not you were generally acquainted with the waterfront at Juneau during the time that you resided in said city.

Answer: I was.

Direct Interrogatory No. 6: State whether or not you were acquainted with the location of the old Carroll wharf, one time used as a fish or saltery house and later used by one George F. Forrest for the purposes of the Juneau Iron Works.

Answer: I was.

Direct Interrogatory No. 7: State whether or not, during your residence in Juneau, you were acquainted with that portion of the waterfront and tide lands extending south from said Carroll wharf 300 or 400 feet to what was known as the C. W. Young wharf.

Answer: I was. [692]

Direct Interrogatory No. 8: Did you know George E. James, a man who conducted a sawmill at Douglas, Alaska, while you resided in Juneau?

Answer: I did.

Direct Interrogatory No. 9: Please state whether or not you, on behalf of the concern with which you were connected, ever had any business dealings with said George E. James, and, if so, state what those business dealings were.

Answer: On behalf of my company I was a regular buyer of lumber at the James sawmill in Douglas. On different occasions I hired his scows and used his

gridiron at Juneau for berthing my company's scows.

Direct Interrogatory No. 10: State whether or not you, on behalf of your said concern, ever had occasion to use any portion of said waterfront and tide lands, and, if so, according to your best recollection, describe the part used by you.

Answer: I had. That portion of waterfront between Juneau Iron Works and C. W. Young wharf known as the James gridiron together with the connecting approaches from Franklin Street.

Direct Interrogatory No. 11: State for what purposes you used the part of the waterfront which you say you used, and in what manner, and under what circumstances, the occasion for its use arose.

Answer: I used the James gridiron on a number of different occasions to berth my company's scows; also at one time for repairing and caulking a scow belonging to my company, on which occasion I had the gridiron in use for a period of two weeks.

Direct Interrogatory No. 12: State if there were any structures or buildings upon the part of the waterfront which you say you used at the time you used it, and, if so, describe them.

Answer: There were. Immediately to the north of the C. W. Young wharf was the James gridiron which, with its approaches from Franklin Street, occupied all that section of the waterfront from the street line to about low water.

Direct Interrogatory No. 13: State whether or not you obtained the acquiescence or permission of any person to use that part of the waterfront which you

say you used, and, if so, give the name of the person from whom such permission or acquiescence was secured.

Answer: I did. George E. James.

Direct Interrogatory No. 14: State generally the terms and conditions under which you began and did use that portion of the waterfront which you say you used.

Answer: First, I had general permission to use the James gridiron to berth the company's scow when the gridiron was not otherwise in use. This permission extended over most of my residence in Juneau. In order to effect scow repairs I obtained specific permission from George E. James to occupy the gridiron between spring tides.

Direct Interrogatory No. 15: State, as near as you can recollect, the year and month that you first used that part of the waterfront [693] and tide lands which you say you used, and during what year or years or month or months, your said use thereof continued.

Answer: I cannot give dates covering my actual use of the gridiron for berthing purposes, and loading and unloading, but the use extended over more than twelve months between May, 1910, and December, 1911. My scow was on the gridiron for caulking and repairs from April 30th, to May 8th, 1911, inclusive.

Direct Interrogatory No. 16: Please state, if you recollect, whether or not the city street commonly known as Franklin Street, was decked and planked

at the time of your use of that portion of the waterfront which you say you used.

Answer: It was.

Direct Interrogatory No. 17: State, according to your best recollection, the manner and means by which you obtained access to the structures, situate on that part of the waterfront and tide lands which you say you used, from the said street, if you did have access to the same from said street.

Answer: I obtained access to the gridiron by means of an inclined plank wagon-way connecting Franklin Street with the gridiron.

Direct Interrogatory No. 18: State whether or not there was any connection between said structures on that part of said waterfront and tide lands which you say you used and said Franklin Street and if so describe said connection, i. e., of what it consisted and how the two were connected.

Answer: The connection between Franklin Street and the gridiron was an inclined plank wagon-road, connected at the top end with the Franklin Street plank grade and at the bottom end with the timbers of the gridiron, the bottom portion of the approach being parallel to, and level with, the top of the gridiron.

Direct Interrogatory No. 19: State whether there was any change in the condition of said structures or said connections from the same to the street, during the time you used the same.

Answer: There was.

Direct Interrogatory No. 20: State whether or not,

by reason of the change of condition in said structures or connections, it was necessary to do anything in the way of repairing or restoring them to their former condition.

Answer: It was.

Direct Interrogatory No. 21: State whether it was the structure or the connection, or both, which was repaired.

Answer: Both.

Direct Interrogatory No. 22: Please state who made said repairs, or paid for the making of them.

Answer: The Alaska Treasure Gold Mining Company.

Direct Interrogatory No. 23: State at whose request or representation said repairs were made by said company.

Answer: At the request of George E. James.
[694]

State of Oregon,
County of Yamhill,—ss.

I, Theodore Acland Harper, being first duly sworn, depose and say, upon oath, that the foregoing answers to Direct Interrogatories Nos. 1 to 23, inclusive, are true and correct, according to the best of my information, knowledge and belief.

THEODORE A. HARPER.

Subscribed and sworn to before me this 6th day of June, A. D. 1914.

[Seal]

G. A. DEARBORN,
Notary Public for Oregon. [695]

In the District Court for the District of Alaska, Division No. 1, at Juneau.

No. 1024-A.

PACIFIC COAST COMPANY, a Corporation,
Plaintiff,

vs.

GEORGE E. JAMES and EDWARD WEBSTER,
Defendants.

Cross-Interrogatories Propounded to T. A. Harper.

Cross-interrogatory No. 1: When did you first become acquainted with the old Carroll-Murphy wharf and wharf site and how frequently did you have occasion to visit it during your residence in Juneau?

Answer: If the old Carroll-Murphy wharf and wharf site is the same as the present Juneau Iron Works I first became acquainted with it shortly after my arrival in Juneau in May, 1910, and I had occasion to visit it frequently from that date until December, 1911.

Cross-interrogatory No. 2: When did you first become acquainted with that portion of the beach or waterfront mentioned in direct interrogatory No. 7 and how frequently did you have occasion to visit it during your residence in Juneau.

Answer: Shortly after my arrival in Juneau in May, 1910. I had occasion to visit it at regular and frequent intervals during my entire residence in Juneau.

Cross-interrogatory No. 3: If you have answered direct interrogatory No. 10 in the affirmative please

give the dates of such transactions mentioned therein.

Answer: I cannot give actual dates of the various occasions when I used the gridiron for berthing purposes. [696] I used it for repair purposes from April 30th to May 8th, 1911, inclusive.

Cross-interrogatory No. 4: If you have answered direct interrogatory No. 12 in the affirmative, please state who erected such structure or structures and by whom or for whom the same were occupied and whether the said structures were erected or occupied by any person or corporation adversely to the Pacific Coast Company. If so, by whom or what corporation and when such adverse claim was made.

Answer: I am unable to state who erected these structures. They were occupied by George E. James. I know nothing about the Pacific Coast Company in connection with these structures or their use.

Cross-interrogatory No. 5: If you have answered direct interrogatory No. 9 in the affirmative, please give the dates of the business dealings therein referred to.

Answer: May, 1910, to December, 1911.

Cross-interrogatory No. 6: Did you have, on behalf of the company you were connected with, any negotiations with the Pacific Coast Company with reference to using or occupying a portion of the tide lands between the old Carroll-Murphy wharf and the C. W. Young wharf and if so state in detail what those negotiations consisted of, with whom you negotiated, describe the particular property involved and state what the result was.

Answer: I had no negotiations with the Pacific Coast Company.

Cross-interrogatory No. 7: Did the Alaska Perseverance Mining Company, during your residence in Juneau, use or occupy for any purpose any portion of such tide lands? [697] If so, state the dates of such use or occupation.

Answer: Yes, they did. I can give no dates.

Cross-interrogatory No. 8: Did any person or corporation use or occupy for any purpose on behalf of the Alaska Perseverance Mining Company any portion of such tide land? If so, give the dates of such use or occupation.

Answer: I do not know.

Cross-interrogatory No. 9: If you have answered either or both of direct interrogatories Nos. 9 and 10 in the affirmative, please state which portion of the said tide lands was so used or occupied and for what period of time, giving the dates if possible, and please state whether such premises were so used or occupied under permission or lease from either the Pacific Coast Company or Gorge E. James.

Answer: That portion of the tide lands known as the James gridiron. I used the James gridiron generally between May, 1910, and December, 1911, and exclusively from April 30th, to May 8th, 1911. Such use was by permission of George E. James.

Cross-interrogatory No. 10: If you have answered direct interrogatory No. 11 in the affirmative, please state how frequently you had occasion to use said waterfront, giving the dates of such use if possible.

Answer: On a number of different occasions be-

tween May, 1910, and December, 1911. The only specific dates I can give are April 30th to May 8th, 1911, inclusive.

Cross-interrogatory No. 11: If you have answered direct interrogatory No. 12 in the affirmative, please state, if [698] you know, who erected such structure or for whom the same was erected.

Answer: I do not know.

Cross-interrogatory No. 12: If you answered direct interrogatory No. 15 in the affirmative, please state how continuously or frequently you used such tide lands.

Answer: Several times a month between May, 1910, and December, 1911.

Cross-interrogatory No. 13: During the period of your residence in Juneau did you know of any claim being made by George E. James adverse to the Pacific Coast Company to the tide lands in dispute in this case? If so, please state when you first became aware of such adverse claim and how frequently you heard the same made by Mr. James; also please state the particular portion of the said tide lands to which Mr. James made such adverse claim.

Answer: During my residence in Juneau I had no knowledge whatever of any dispute as to George E. James' ownership of these tide lands.

State of Oregon,
County of Yamhill,—ss.

I, Theodore Acland Harper, being first duly sworn, depose and say, upon oath, that the foregoing answers to cross-interrogatories Nos. 1 to 13, inclusive, are

true and correct, according to the best of my information, knowledge and belief.

THEODORE A. HARPER.

Subscribed and sworn to before me this 6th day of June, A. D. 1914.

[Seal]

G. A. DEARBORN,

Notary Public for Oregon. [699]

State of Oregon,

County of Yamhill,—ss.

I, G. A. Dearborn, a Notary Public in and for said County of Yamhill, State of Oregon, do hereby certify that before proceeding to the examination, the witness, T. A. Harper, in the foregoing deposition named, was by me duly sworn to tell the truth, the whole truth and nothing but the truth in said cause; that said deposition was taken by me at my office in the city of Dundee, in said County of Yamhill and State of Oregon, on the sixth day of June, 1914, between the hours of 9 A. M. and 12 M. of said day, in accordance with the annexed stipulation; that said deposition was reduced to writing by me, and when completed was by me carefully read to said witness; and being by him corrected, was by him subscribed in my presence.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed my official seal, this 6th day of June, 1914.

[Seal]

G. A. DEARBORN,

Notary Public in and for the County of Yamhill,
State of Oregon.

My commission expires on the 2d day of April, 1916.

Cost of deposition—\$10.00.

[Endorsed]: Court No. 1024—A. In the District Court for the Territory of Alaska, Division No. One, at Juneau. Pacific Coast Company, Plaintiff, vs. George E. James and Edward Webster, Defendants. Stipulation. Direct and Cross-interrogatories Propounded to T. A. Harper, and Answers of T. A. Harper Thereto, and Certificate of Notary Public. Gun-nison & Robertson, Attorneys at Law, Juneau, Alaska, Filed in the District Court, District of Alaska, First Division. Jun. 25, 1914. J. W. Bell, Clerk. By J. J. Clarke, Deputy. [700]

*In the District Court for the Territory of Alaska,
Division Number One, at Juneau.*

Court No. 1024—A.

PACIFIC COAST COMPANY, a Corporation,
Plaintiff,

vs.

GEORGE E. JAMES and EDWARD WEBSTER,
Defendants.

Deposition of Capt. H. H. Lloyd.

State of Washington,
County of King,—ss.

Capt. H. H. LLOYD, a witness being produced on behalf of the plaintiff, being first duly sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

In answer to Direct Interrogatory No. 1 he says: "H. H. Lloyd; residence, Seattle; age, 75."

In answer to Direct Interrogatory No. 2 he says: "Master mariner."

In answer to Direct Interrogatory No. 3 he says: "No."

In answer to Direct Interrogatory No. 4 he says: "About 1907."

In answer to Direct Interrogatory No. 5 he says: "Master mariner, except in 1882."

In answer to Direct Interrogatory No. 6 he says: "I was U. S. Inspector afloat, employed between Portland, Ore. and Alaska Ports, the year before Captain J. C. Hunter came to Juneau as master of the S. S. 'Idaho.' By best recollection is that Capt. Hunter came to Juneau on the S. S. 'Idaho' in the spring of 1884; at least it was in the spring of the year 1884, or 1885, that Hunter came to Juneau, and I became U. S. Inspector afloat, as above stated, the October before. I continued to be inspector for about nine months, and immediately thereafter I became a pilot and master on steamships of the Pacific Coast Company plying between Portland, Seattle, Juneau and other Alaskan ports; part of the time I acted as master and part of the time as pilot, until the year 1907, continuously, plying between ports on the west coast of the U. S. and Juneau and other Alaska ports, and as far north as Nome." [701]

7. In answer to Direct Interrogatory No. 7 he says: "I did not sail on any ship in the year 1882. It was in the year 1883 or at the latest in the spring of 1884, that I was U. S. Inspector on the S. S.

‘Idaho,’ Carroll, master, and on the S. S. ‘Ancon’ and then back to the S. S. ‘Idaho,’ of which Capt. Hunter had become master. Those ships plied between Portland, Juneau, Sitka and other Alaskan points, and my services as inspector on those ships continued for about nine months. Immediately thereafter I became pilot on the S. S. ‘Ancon’ and continued to be master or pilot continuously from that time till 1907, plying between said points on various ships.”

8. In answer to Direct Interrogatory No. 8 he says: “As stated above in the year 1883 and 1884, I sailed on the S. S. ‘Idaho’ and ‘Ancon’ between Portland and Juneau, as U. S. inspector, and as master and pilot.”

9. In answer to Direct Interrogatory No. 9 he says: “In 1883 and 1884 the ships above mentioned landed at what was known at that time as the Carroll-Murray wharf.”

10. In answer to Direct Interrogatory No. 10, he says: “The said wharf consisted of a warehouse and wharf extending from the line of high tide out into the water, a distance of about 250 feet, as near as I can recall. The wharf was a crib wharf. The outer part or face of the dock was in about 20 feet of water at low tide. The wharf and warehouse were substantial structures and amply large enough to answer all the demands of commerce at that time.”

11. In answer to Direct Interrogatory No. 11, he says: “The face of the wharf was from 50 to 60 feet across.”

12. In answer to Direct Interrogatory No. 12, he

says: "I made no landings in 1882. In 1883 and 1884 we generally made port landings at said wharf; it is barely possible we occasionally made a starboard landing."

13. In answer to Direct Interrogatory No. 13, he says: "It was not possible to tie up the ship to the wharf alone in all kinds of weather; it was necessary to take the head and stem lines ashore and made them fast to piles which were driven and used for this purpose at about the line of ordinary high water. When the tide was high we had to run the lines mentioned ashore to the piles in small boats; when the tide was low we threw the heaving line ashore and men would drag the head and stem lines to the piles and fasten them. The head and stem lines were each about 100 fathoms in length and nearly the whole line would necessarily be used and stretched from the ship to the pile in making the ship fast."

14. In answer to Direct Interrogatory No. 14, he says: "When I first sailed to Juneau, as above stated, piles were driven in the tide lands adjacent to the Carroll-Murray wharf for the purpose of mooring vessels to, and they were so used by all the ships that I was on for many years—up to about the year 1896. And they were so used by other ships for the same purpose. I cannot say exactly where those piles were driven but because of the length of [702] the head line used in making port landings, the south pile was not less than from 300 to 350 feet along the shore in a southerly direction from the southeast end of the warehouse; the pile north of the wharf was something about the same distance north of the wharf."

15. In answer to Direct Interrogatory No. 15 he says: "No."

16. In answer to Direct Interrogatory No. 16, he says: "From before the time I commenced going to Juneau, as above stated, until sometime after 1896."

17. In answer to Direct Interrogatory No. 17, he says: "At the Carroll-Murray wharf."

18. In answer to Direct Interrogatory No. 18, he says: "At the Carroll-Murray wharf."

19. In answer to Direct Interrogatory No. 19, he says: "Yes, because when I last landed at Juneau the new wharf of the Pacific Coast Company had been built, but up to the time the new wharf was built about the year 1896, there was no change in the way ships were landed, as above described, at the Carroll-Murray wharf—the piles were used continuously and of necessity in making the ships fast at the wharf."

20. In answer to Direct Interrogatory No. 20, he says: "Yes, I was master or pilot of the ships."

21. In answer to Direct Interrogatory No. 21, he says: "Yes, I know what the practice was of the masters of vessels in landing their ships at the Carroll-Murray wharf in Juneau, from the time I first went there as above stated, until about the year 1896. The manner of landing and mooring the vessels was above described."

22. In answer to Direct Interrogatory No. 22, he says: "A wharf site at least 600 feet in length, that is, running the general direction of the beach was necessary, and extending from the beach outward to a sufficient depth of water. On account of the wharf being not more than about 50 to 60 feet across its face, and because of the distance the wharf extended

into deep water, it was necessary, to have considerable distance along the shore, on each side of the dock. The prevailing winds being from the southward it was especially necessary to have a long space for the head line to reach, a long distance down the shore; otherwise too great a strain would be put on the wharf."

23. In answer to Direct Interrogatory No. 23, he says: "No."

24. In answer to Direct Interrogatory No. 24, he says: "Yes."

25. In answer to Direct Interrogatory No. 25, he says: "Nothing."

26. In answer to Direct Interrogatory No. 26, he says: "Map marked Exhibit 'A' hereto attached is a substantially correct representation of the location of the Carroll-Murray wharf and surrounding shore line when I first went there in the spring of 1883 and as it remained for many years. The 'Original Wharf,' as colored in yellow, is the wharf I have been testifying about." [703]

1. In answer to Cross-Interrogatory No. 1, he says: "No."

2. In answer to Cross-Interrogatory No. 2, he says: "7 years."

3. In answer to Cross-Interrogatory No. 3, he says: "Christmas, 1907, last time I was in Juneau."

4. In answer to Cross-Interrogatory No. 4, he says: "No."

5. In answer to Cross-Interrogatory No. 5, he says: "No."

6. In answer to Cross-Interrogatory he says:

7. In answer to Cross-Interrogatory No. 7, he says: "S. S. 'Senator,' 280 feet in length, in Dec. 1907."

8. In answer to Cross-Interrogatory No. 8, he says: "No."

9. In answer to Cross-Interrogatory No. 8, he says, "No, I never measured it as I now recollect."

10. In answer to Cross-Interrogatory No. 10, he says: "My personal observation and my long acquaintance with it—I landed at that wharf between 350 to 400 times."

11. In answer to Cross-Interrogatory No. 11, he says: "Saw them first after they were driven."

12. In answer to Cross-Interrogatory No. 12, he says: "No, but never saw them used for any other purpose than mooring ships, and evidently had no other purpose and were put to no other use."

13. In answer to Cross-Interrogatory No. 13, he says: ——— (answered in number 12).

14. In answer to Cross-Interrogatory No. 14, he says: "Cannot tell exactly but it was the year 1896, to the best of my recollection, it was not far from that time."

15. In answer to Cross-Interrogatory No. 15, he says: "I mean to say that to my personal knowledge the ships I was master or pilot on, or on which I was inspector, never tied up to the wharf alone; but always used the piles for mooring the vessels to. I know that all sea-going vessels always used the piles for mooring there. They could not lie at the wharf in safety unless they did."

16. In answer to Cross-Interrogatory No. 16, he says: "I do not mean to say that it was necessary to

have a wharf site exactly 600 feet in length, but I mean to say that one shorter than that would be much less serviceable than one longer than 600 feet."

17. In answer to Cross-Interrogatory No. 17, he says: "I have already given the sources of my information." [704]

18. In answer to Cross-Interrogatory No. 18, he says: "Upon the facts stated in my answers to direct and cross-interrogatories above."

19. In answer to Cross-Interrogatory No. 19, he says: "Yes."

20. In answer to Cross-Interrogatory No. 20, he says: "I have no interest one way or the other, and I have no preference as to which party shall win this lawsuit—I merely state the facts I know."

21. In answer to Cross-Interrogatory No. 21, he says: "About 1896."

22. In answer to Cross-Interrogatory No. 22, he says: "About May 15, 1914."

23. In answer to Cross-Interrogatory No. 23, he says: "I do not remember having discussed the subject, and I cannot say I have thought about it—I had no occasion to do so."

24. In answer to Cross-Interrogatory No. 24, he says: "Yes, I have testified from my own independent recollection wholly except as qualified in my next answer."

25. In answer to Cross-Interrogatory No. 25, he says: "I talked with Capt. Hunter to refresh my recollection as to the first year I was in Juneau as inspector. If Capt. Hunter was master of the 'Idaho' in 1884 at Juneau, then I am positive that I was at Juneau first as inspector aboard ship, in the

year 1883. I had the talk with Capt. Hunter about May 15, 1914, at Seattle.”

H. H. LLOYD.

State of Washington,
County of King,—ss.

I, Leroy V. Newcomb, a Notary Public in and for the County of King in the State of Washington, do hereby certify that the above and foregoing deposition was taken before me and reduced to writing by myself at Seattle in said county on the 6th day of June, 1914, at four o'clock in the afternoon of said day in pursuance to the annexed stipulation and interrogatories, direct and cross, hereto attached. That the above-named witness before examination was sworn to testify *to testify* the truth, the whole truth and nothing but the truth, and said deposition was carefully read by said witness and then subscribed by me.

Dated this 6th day of June, 1914.

[Seal] LEROY V. NEWCOMB,
Notary Public in and for the State of Washington,
Residing at Seattle. [705]

*In the District Court for the District of Alaska,
Division No. 1, at Juneau.*

No. 1024—A.

PACIFIC COAST COMPANY, a Corporation,
Plaintiff,

vs.

GEORGE E. JAMES and EDWARD WEBSTER,
Defendants.

Stipulation.

It is hereby stipulated and agreed between counsel for the plaintiff and counsel for the defendant George E. James above named, that the deposition of H. H. Lloyd, of Seattle, Washington, a witness on behalf of the plaintiff in this action, may be taken before L. V. Newcomb, a Notary Public, at his office 1011 American Bank Building, Seattle, Washington; that all objections to the giving of the statutory notice of the taking of said depositions are hereby waived and issuance of a commission out of the above-entitled court is also hereby waived.

It is agreed that written interrogatories shall be propounded by counsel for plaintiff and submitted to counsel for defendant and that cross-interrogatories shall thereafter and within five days from the receipt of the said interrogatories be propounded by counsel for the defendant and submitted to counsel for the plaintiff and that such interrogatories and cross-interrogatories shall then be attached to this stipulation and forwarded to the said Notary Public.

That when said deposition has been taken the same may [706] be used at the trial of this action subject to the same objections as to the form of the interrogatories as if the said witness were there personally present and testifying, the said deposition when taken shall be attached to this stipulation and forwarded by the said Notary Public before whom the same is taken to the clerk of the above-entitled court.

Dated this 19th day of May, 1914.

SHACKLEFORD & BAYLESS,

Counsel for Plaintiff.

GUNNISON & ROBERTSON,

Counsel for Defendant George E. James.

[Endorsed]: Original. No. 1024—A. In the District Court for the District of Alaska, Division No. 1, at Juneau. Pacific Coast Company, a Corporation, Plaintiff, vs. George E. James and Edward Webster, Defendants. Stipulation. Shackelford & Bayless, Attorneys for Plaintiff. Office, Juneau, Alaska.

*In the District Court for the District of Alaska,
Division No. 1, at Juneau.*

No. 1024—A.

PACIFIC COAST COMPANY, a Corporation,
Plaintiff,

vs.

GEORGE E. JAMES and EDWARD WEBSTER,
Defendants.

**Interrogatories to be Propounded to Captain H. H.
Lloyd.**

Interrogatory No. 1: Please state your name, residence and age.

Interrogatory No. 2: What has been your occupation or profession?

Interrogatory No. 3: Are you engaged in any occupation or profession at the present time?

Interrogatory No. 4: When did you retire?

Interrogatory No. 5: What was your occupation

or profession in [707] the year 1882, 1883 and 1884?

Interrogatory No. 6: By whom or by what company were you employed?

Interrogatory No. 7: Please state what ships you sailed on in the years 1882, 1883 and 1884 and the official position you occupied on such ship.

Interrogatory No. 8: Did you sail on any such ships to Juneau, Alaska, in the years 1882, 1883 and 1884? If so, state what ships and what position you occupied on the same and give the dates, as near as you can.

Interrogatory No. 9: Where did such ships land in Juneau in the years 1882, 1883 and 1884?

Interrogatory No. 10: Please describe the Carroll-Murray wharf and wharf site as it existed on your first voyage to Juneau, Alaska.

Interrogatory No. 11: What was the length of the face of said wharf?

Interrogatory No. 12: How did you land the ship or ships you sailed to Juneau on in the years 1882, 1883 and 1884?

Interrogatory No. 13: Was it possible to tie up such ships at the face of said wharf in all kinds of weather? If not, please state how and to what such ships were tied.

Interrogatory No. 14: Were there piles driven in the tide lands adjacent to the Carroll-Murray wharf for the purpose of mooring the vessel to when you first sailed to Juneau? If so, where with reference to the said wharf were such piles driven? Please describe in detail the situation as you recollect it.

Interrogatory No. 15: When you first sailed to

Juneau was there [708] any other wharf there besides the Carroll-Murray wharf?

Interrogatory No. 16: For how long and until what time was the Carroll-Murray wharf used to land ocean-going vessels?

Interrogatory No. 17: During this period of time where did all the sea-going ships land at Juneau?

Interrogatory No. 18: During this period of time, where did all the ships you sailed on to Juneau tie up?

Interrogatory No. 19: Was there any change in the practice of landing ships at Juneau when you last landed there and when you first landed there?

Interrogatory No. 20: Did you have charge of landing at Juneau the ship or ships you sailed on in the years from 1882 until the date of your retirement from active service or from the date you last landed in Juneau?

Interrogatory No. 21: Do you know the practice of masters of vessels in landing ships at Juneau at the Carroll-Murray wharf? If so, describe in detail the manner in which vessels were so landed and the manner in which they were moored.

Interrogatory No. 22: On account of the size of the said wharf do you know how much ground in addition thereto was necessary for use in making fast the ships which landed at that dock? If so, state the size of the tract of land necessary for such use as a wharf site in landing the vessels which sailed [709] to Juneau prior to May 17, 1884, giving your reasons.

Interrogatory No. 23: Have you any interest in this suit?

Interrogatory No. 24. Are you free from bias and

prejudice for or against either of the parties to this action?

Interrogatory No. 25: If you know of any additional facts and circumstances relevant to this matter which you have not been interrogated upon please relate the same fully and give your reasons.

Interrogatory No. 26: If you have access to and can obtain a map or plat showing the situation of the old Carroll-Murray wharf prior to May 17, 1884, please attach the same to your deposition, properly marked for identification.

SHACKLEFORD & BAYLESS,

Attorneys for Plaintiff.

[Endorsed]: Original. No. 1024—A. In the District Court for the District of Alaska, Division No. 1, at Juneau. Pacific Coast Company, a Corporation, Plaintiff, vs. George E. James and Edward Webster, Defendants. Interrogatories to be Propounded to Captain H. H. Lloyd. Shackleford & Bayless, Attorneys for Plaintiff. Office, Juneau, Alaska. [710]

*In the District Court for the Territory of Alaska,
Division Number One, at Juneau.*

Court No. 1024—A.

PACIFIC COAST COMPANY, a Corporation,
Plaintiff,

vs.

GEORGE E. JAMES and EDWARD WEBSTER,
Defendants.

**Cross-Interrogatories to be Propounded to Capt.
H. H. Lloyd.**

Cross-Interrogatory No. 1: Are you at the present time holding a position or connected or interested in any capacity whatever with the Pacific Coast Company, or the Pacific Coast Steamship Company, or the Pacific Coast Coal Company, or any of the subsidiary corporations of said named companies?

Cross-Interrogatory No. 2: How many years has it been since you were employed in any capacity whatever for any of the corporations referred to in cross-interrogatory No. 1?

Cross-Interrogatory No. 3: How many years has it been since you were at Juneau, Alaska, either as master or in some other capacity on some ship, or in your personal capacity? Please state the year, and the capacity in which you were here.

Cross-Interrogatory No. 4: Have you seen the Carroll-Murray wharf and wharf site since the year which you gave in your answer to cross-interrogatory No. 3?

Cross-Interrogatory No. 5: Do you have any personal knowledge for what and in what manner the Carroll-Murray wharf and wharf site has been used since the year you gave in your answer to cross-interrogatory No. 3?

Cross-Interrogatory No. 6: If you answered cross-interrogatory No. 5 in the affirmative, state upon what you base your knowledge.

Cross-Interrogatory No. 7: Give the name of the ship which you last sailed to Juneau, her ap-

proximate length, and the month and year that you brought her to Juneau. [711]

Cross-Interrogatory No. 8: Did you land or moor the ship which you mentioned in interrogatory No. 7 to the Carroll-Murray wharf?

Cross-Interrogatory No. 9: If in your direct examination you have stated the length of the face of the Carroll-Murray wharf, state whether you ever measured the face yourself.

Cross-Interrogatory No. 10: If you have never measured the face of the Carroll-Murray wharf, state upon what you base your knowledge that it was of the length which you state.

Cross-Interrogatory No. 11: Did you actually see the driving of the piles to which you referred in direct interrogatory No. 14, into the tide lands adjacent to the Carroll-Murray wharf, or was it after they were driven that you first saw them?

Cross-Interrogatory No. 12: Do you know of your own personal knowledge that the piles to which you referred in cross-interrogatory No. 11, were driven for the express purpose of being used to moor vessels to which landed at the Carroll-Murray wharf?

Cross-Interrogatory No. 13: If you have answered cross-interrogatory No. 12 in the affirmative, state upon what you base your knowledge and information.

Cross-Interrogatory No. 14: State the last occasion, giving the month and year, on which you, as master, or in some other capacity, moored or assisted to moor a vessel to the Carroll-Murray wharf at Juneau.

Cross-Interrogatory No. 15: If you have answered direct interrogatory No. 13 in the negative, do you mean to say that a ship never was tied up or moored to the face of said wharf except by tying or mooring the same to the piles that you have referred to as being on the adjacent tide lands, or do you mean to say that within your personal knowledge, a ship was never so tied up or moored [712] to said wharf? State which you mean.

Cross-Interrogatory No. 16: Calling your attention to direct interrogatory No. 22, do you mean to state that it was necessary to have a wharf site of the exact length you have mentioned therein, or could not said wharf site been considerably shorter or considerably longer than the one you have mentioned, and still have been just as serviceable?

Cross-Interrogatory No. 17: Is it not true that you have no knowledge whatever of the wharf and wharf site at Juneau other than that you know that you tied your vessel up to the Carroll-Murray wharf at the times that you landed at Juneau, and perhaps moored the same to the piles on the adjacent tide lands to which you referred?

Cross-Interrogatory No. 18: If you have answered cross-interrogatory No. 17 in the negative please state upon what your alleged information and knowledge is based.

Cross-Interrogatory No. 19: Do you know the defendant, George E. James, in this suit?

Cross-Interrogatory No. 20: Do you mean to say that, as between the plaintiff and the defendant, George E. James, the plaintiff having been your

former employer, you are not prejudiced to the extent that you would prefer to see them win this lawsuit?

Cross-Interrogatory No. 21: State the year that you last saw or were upon the Carroll-Murray wharf or wharf site.

Cross-Interrogatory No. 22: When was your attention first directed to the fact that the Carroll-Murray wharf and wharf site was in litigation between the plaintiff and the defendant herein? [713]

Cross-Interrogatory No. 23: When, prior to the time that you were informed that the Carroll-Murray wharf and wharf site was in litigation between the parties hereto, was it that you last thought of or discussed the Carroll-Murray wharf and wharf site, its size, the uses to which it was put, the length of the face of the wharf, and the piles which you say were on the adjacent tide lands, and the purpose for which they were driven and used?

Cross-Interrogatory No. 24: At the time you were informed that the Carroll-Murray wharf and wharf site was in litigation between the parties hereto, had you any independent recollection of the matters to which you have testified in your direct interrogatories?

Cross-Interrogatory No. 25: If you answered cross-interrogatory No. 24 in the negative, and if you refreshed your recollection as to any particular of the matters testified to by you, state fully how, when and from what source you refreshed your recollection.

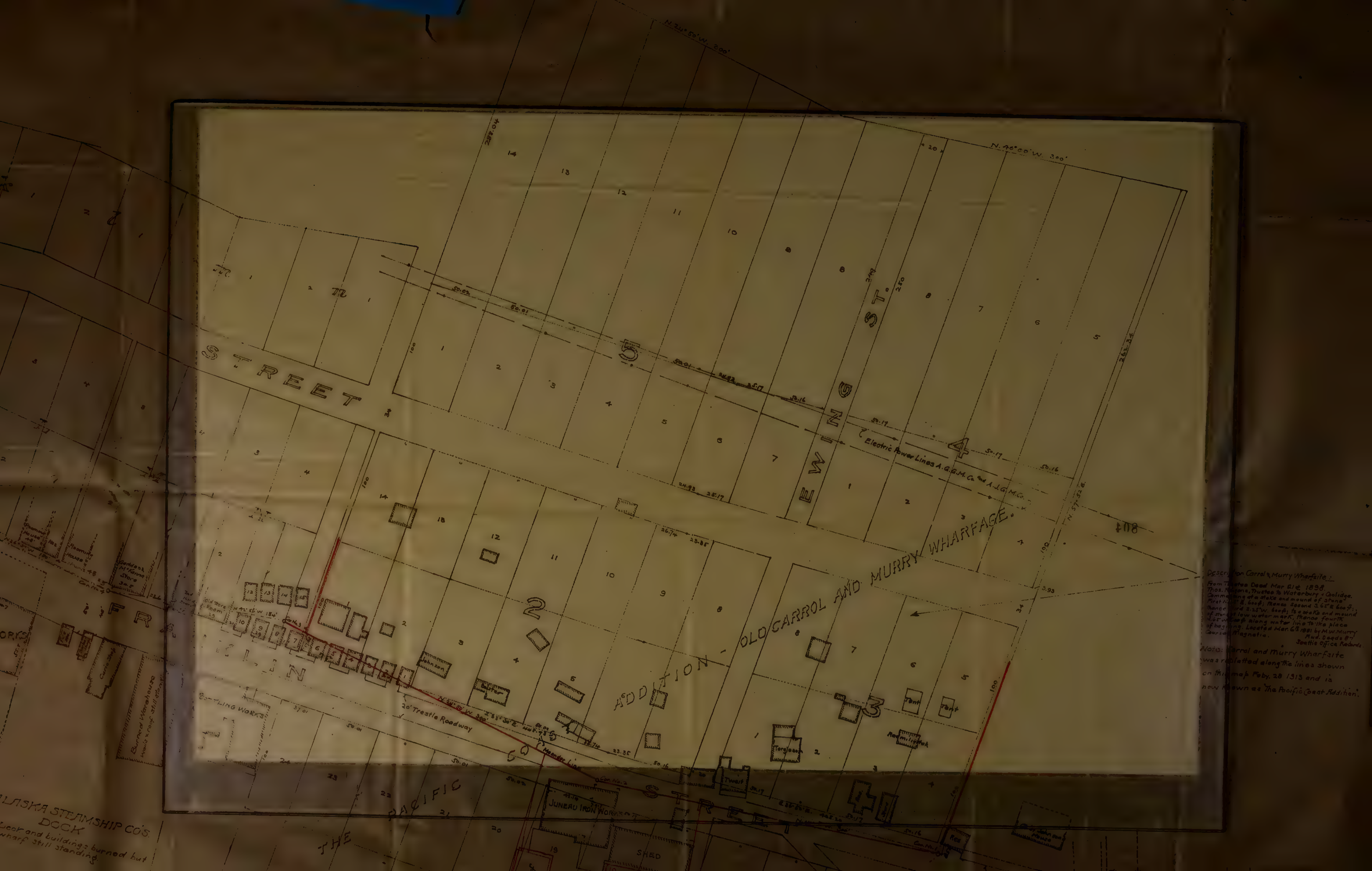
GUNNISON & ROBERTSON,

Attorneys for Defendant George E. James.

[Endorsed]: Court No. 1024—A. In the District Court for the Territory of Alaska, Division No. One, at Juneau. Pacific Coast Company, a Corporation, Plaintiff, vs. George E. James and Edward Webster, Defendants. Cross-interrogatories to be Propounded to Capt. H. H. Lloyd. Gunnison & Robertson, Attorneys at Law, Juneau, Alaska.

[Endorsed]: Original. No. 1024—A. In the District Court for the District of Alaska, Division No. 1, at Juneau. Pacific Coast Company, Plaintiff, vs. George E. James and Edward Webster, Defendants. Deposition. Published in open court, July 17, 1914. J. W. Bell, Clerk. By J. T. Reed, Deputy. Filed in the District Court, District of Alaska, First Division, Jul. 17, 1914. J. W. Bell, Clerk. By John T. Reed, Deputy. [714]







THE PACIFIC WHARF

MUNICIPAL DOCK

YOUNGS DOCK

FLAT

ENGINE

Original Wharf

San Francisco

1892

San Francisco Public Works Department

[illegible]

EXPLANATION	
Buildings definite, located shown this	
Buildings definite located	
Company property definite shown	
Company property shown solid shown	
Buildings definite, company	
Buildings definite found underneath	
Water pipe at bottom	
Less boundaries shown this	

THE PACIFIC COAST COMPANY
MAKES A PORTION OF
BUREAU, ALASKA
SHEPHERD COMPANY OF ALASKA
SCALE One inch = 50 ft
SURVEY Feb. 1913



*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1024—A.

PACIFIC COAST COMPANY, a Corporation,
Plaintiff,

vs.

GEORGE E. JAMES and EDWARD WEBSTER,
Defendants.

**Certificate and Order Settling and Allowing Bill of
Exceptions.**

This matter coming on for hearing before the above-entitled Court on motion of the plaintiff, the Pacific Coast Company, a corporation, asking that the foregoing bill of exceptions be settled, allowed, filed and made a part of the record in the cause; and it appearing that said bill of exceptions contains all the testimony and evidence introduced upon the trial of said cause, and the Court being fully advised in the premises,

IT IS ORDERED that the foregoing bill of exceptions be and the same is hereby allowed and settled and made a part of the record in this case, and the clerk of the above-entitled court ordered to file the same.

And the Court certifies that the bill of exceptions so settled and allowed was presented to it within the time prescribed by law and the rules of this Court, and within the time allowed by this Court, by an order made and entered on the 8th day of February, 1915. [716]

And the Court further certifies that the foregoing transcript of the testimony, together with the depositions, exhibits thereto attached, constitutes all the evidence and testimony introduced upon the trial of this cause, and the exceptions and objections noted therein were the objections made and exceptions and rulings allowed and made by the Court, and the same are ordered to be made a part of the record herein.

AND IT IS FURTHER ORDERED that the plaintiff's request for findings of fact and conclusions of law, the refusal of the same, and the exceptions allowed thereto as well as the exceptions allowed the plaintiff to the findings of fact and conclusions of law, and the judgment signed by the Court the 27th day of January, 1915, be made a part of the record herein.

And it appearing necessary and proper that in case of appeal herein, the originals of the following exhibits, to wit: The plats attached to Nos. 17 and 19, and also Nos. 20, 23, and 25 of the plaintiff's exhibits, and Nos. A and C of the defendant's exhibits,—should be inspected by the Circuit Court of Appeals on said appeal.

IT IS FURTHER ORDERED that said original exhibits be forwarded to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, and on final judgment there, be returned to the Clerk of this Court.

Done in open court this 20th day of March, 1915.

ROBERT W. JENNINGS,

Judge.

[Endorsed]: Original No. 1024—A. In the District Court for the District of Alaska, Division No. 1, at Juneau. Pacific Coast Company, Plaintiff, vs. George E. James and Edward Webster, Defendants. Certificate and Order Settling and Allowing Bill of Exceptions. Shackleford & Bayless, Attorneys for Plaintiff. Office, Juneau, Alaska. Filed in the District Court, District of Alaska, First Division. Mar. 20, 1915. J. W. Bell, Clerk. [717]

*In the District Court for the District of Alaska,
Division No. 1, at Juneau.*

No. 1024—A.

PACIFIC COAST COMPANY, a Corporation,
Plaintiff,

vs.

GEORGE E. JAMES and EDWARD WEBSTER,
Defendants.

**Findings of Fact and Conclusions of Law Requested
by the Plaintiff.**

The Court does now decide and find the facts in this case to be as follows:

FINDINGS OF FACT.

I.

That the plaintiff, the Pacific Coast Company, is a corporation duly organized and existing, and qualified to do, and doing business as a corporation in the territory of Alaska, and that it has heretofore paid its annual license fees for the years 1913 and 1914.

II.

That on the 6th day of March, 1881, M. W. Murry being a citizen of the United States over the age of twenty-one years, and a resident of the Town of Harrisburg, now Juneau, Alaska, entered upon, located and claimed and entered into the actual possession and occupation of a certain piece or parcel of land for building and wharf purposes, the same being unappropriated, vacant, public land, and being free and open to location and appropriation, which said piece or parcel of land is described as follows: [718]

“Located, lying and being about one-eighth ($\frac{1}{8}$) of a mile easterly from the town of Harrisburg, now Juneau, on the seashore, the center line being marked by a blazed tree and notice and a large boulder near low-water mark in line S. 25° W. Magnetic, courses and distances are as follows:

Commencing at a stake and mound of stone 1st, N. 25° E. 600 ft.; thence 2d, 65° E. 600 ft; thence 3d, S. 25° W. 600 ft. to stake and mound of stone at low-water mark, and thence 4th, N. 65° W. 600 ft. along the water line to the place of beginning,” all of which said land borders and abuts upon Gastineau Channel, which is a navigable arm of the North Pacific Ocean in the District of Alaska.

III.

That thereafter and on the 26th day of March, 1881, the miners and citizens of the town of Rockwell, now Juneau, Alaska, in meeting assembled,

unanimously adopted, endorsed, and approved the following resolution:

“Whereas Captain M. W. Murray has located outside and to the east of the city, a wharf site, and proposes at earliest opportunity to build a wharf and warehouse for the accommodation of vessels and steamers and for the benefit of all citizens alike, it is the sense of the meeting that we should encourage such an enterprise; therefore it is hereby “Resolved that the miners and citizens of the district and city, recognizing that such improvements would be a public benefit, hereby accept, endorse and recognize the rights of Cap. Murray, and will by our future acts endorse and recognize his rights to the said wharf site and improvements.”

IV.

That the said M. W. Murray located, and entered into the possession of the said tract of land above described, and the whole thereof, and in the year 1881 commenced the erection and construction of a certain wharf which was afterward known as the Carrol-Murray wharf of Juneau, Alaska, and completed the erection and construction of the same in the year 1882. That said wharf erected upon said premises consisted of an approach about 200 feet long, and a face about 60 feet long, by 40 feet wide. That said wharf structure was erected at or about center of said wharf site and extended from the uplands on said premises out to deep water of Gastineau Channel. That the said M. W. Murray and his successors in interest constructed other valuable improvements

upon said premises, consisting of a warehouse, coal bunkers, and other buildings used for wharf purposes. That from the date of the completion of said wharf down to the year 1894, the said Carrol-Murray wharf was the only wharf in [719] the town of Juneau, Alaska, at which all sea-going vessels plying the port of Juneau, tied up to. That on account of the limited extent of the face of the said wharf, it was necessary for such vessels to run lines ashore in mooring to said Carrol-Murray wharf. That the said M. W. Murray and his successors in interest, for the purpose of marking and defining the boundaries of the tract of land above described, and also for the purpose of mooring the said vessels in the manner aforesaid, in the year 1883, drove two piles between high and low water mark, 600 feet apart and 300 feet from the center of the said tract of land. That it was the practice for the said vessels plying the port of Juneau and tying up to the said Carrol-Murray wharf during the period from 1881 to 1894, to run lines ashore to the said two piles or to other permanent objects in the vicinity of the said piles, for the purpose of making the ships fast to the said wharf. That a space of 300 feet on either side of the center of the said wharf site was a necessary and reasonable adjunct to the use and enjoyment of the said wharf and wharf site. That the tide lands and premises, the same being—13 feet in front of the southerly 13 feet of Lot I in Block S, and 100 feet in front of lots 1 and 2 in Block T, of Juneau, Alaska, in dispute in this case were actually used and occupied by the said M. W. Murray and his successors

in interest in the manner aforesaid during the period from 1881 until 1894. That in the year 1898 United States patent was issued for the entire uplands of the said premises, and that by mesne conveyances the whole of the said wharf site including said 13 feet of tide lands in front of the southerly 13 feet of Lot 1 in Block S, and said 100 feet of tide lands in front of Lots 1 and 2 in Block T of the town of Juneau, the premises in dispute, was conveyed to the plaintiff and that the said plaintiff and its grantors and predecessors in interest were, from the 6th day of March, 1881, down to the [720] year 1894, in open, notorious, exclusive and continuous possession, use, and occupation of each and all of the said premises, uplands and tide lands, occupying the same under a *bona fide* claim of ownership and right of possession, and exercising dominion over the tide lands above described, and over the right of way out to deep water of Gastineau Channel; and that the said plaintiff and its grantors and predecessors in interest have been, since the 6th day of March, 1881, in the open, notorious, exclusive and continuous possession of each and all of the said premises, occupying the same and exercising dominion over the tide lands above described (saving and excepting the tide lands in dispute in this action as herein stated), and over the right of way out to deep water aforesaid, since that date; that the said tide lands lie immediately in front of Blocks O, P, Q, R, S, and T, in the Townsite of Juneau, Alaska; and that the said plaintiff is the owner of and in possession of the said Blocks O, P, Q, R, S and T, in the said townsite of

Juneau, Alaska. That after 1894 the plaintiff and its predecessors in interest, discontinued the use of the Carroll-Murray wharf as a wharf, but themselves, their agents and tenants actually occupied the improvements placed upon the tide lands, actually occupied the wharf structure and the buildings appurtenant thereto, for various purposes, such as a sardine factory, a glove factory, and for other purposes, and the plaintiff, its agents and tenants have continued such use and occupation of the said premises until the present time; that in 1894 the plaintiff and its grantors and predecessors in interest discontinued the actual occupation of the premises in dispute, but that between 1894 and 1900 no other person occupied said premises; that in the years 1900 and 1901 the lessees and tenants of the plaintiff actually occupied the premises in dispute; that in the year 1905, Charles E. Davidson, as receiver of the Willson-Sylvester Estate, the lessees and tenant of the plaintiff, actually occupied the [721] premises in dispute, and erected thereon a certain gridiron, which remained upon said premises for the space of six months or more. That the said plaintiff and its grantors and predecessors in interest have ever since the 6th day of March, 1881, looked after, exercised dominion over and paid taxes on the premises in dispute and have never had the intention to abandon the said wharf site or any part thereof. That on May 17th, 1884, the plaintiff, its grantors and predecessors in interest, actually used, occupied and claimed the whole of said wharf site including the premises in dispute herein and from said date continued in such

actual use, occupation, and possession, until 1894, when the Carrol-Murray wharf was discontinued as a wharf, but that ever since prior to May 17th, 1884, the plaintiff, its grantors and predecessors in interest, has in good faith, claimed the possession and right of possession, use and occupation of the premises in dispute under location notice, deeds, and patents.

V.

That on or about the 15th of April, 1900, the defendant George E. James, first landed lumber and rafts on a portion of the premises located by M. W. Murray on March 6th, 1881, which is known as the Carrol-Murray wharf site, and which has been conveyed to the plaintiff by mesne conveyances (and which premises have heretofore been subdivided into Blocks O, P, Q. R, S and T); that said defendant from said date down to the date of the institution of this action has used said portion of tide lands of the Carrol-Murray wharf site, which portion is described as follows:

Extending along the line of *mesne* high tide a distance of about 100 feet in front of Lots 1 and 2 in Block T, and 13 feet in front of the southerly 13 feet of Lot 1, in Block S in the Town of Juneau, Alaska, and thence from the said line of *mesne* high tide out to the deep and navigable waters of Gastineau Channel;

That the use by said defendant of said premises [722] consisted in the landing of rafts and scows of lumber; that said defendant has placed no monuments of any kind upon said premises to indicate the bound-

aries thereof; that the landing of said scows and rafts has been casual and intermittent; that the use of said premises by said defendant has not been exclusive; that the claim of title of the defendant in and to said premises is not based on any location notice, deed or other written instrument; that said defendant has used and occupied said premises by permission from the plaintiff; that said defendant made no claim of ownership in and to said premises adverse to the plaintiff until a short time before the institution of this action; that said defendant some time in the year 1905 erected a small gridiron on the premises herein mentioned; that prior to said date the defendant had erected no structure nor improvements of any kind upon said premises; that in the year 1906 the defendant constructed a gridiron upon said premises and in the year 1907 erected an easterly approach therefrom to lower Franklin Street; that in the year 1912 the defendant erected a westerly approach therefrom to lower Franklin Street; and that defendant has paid no taxes on said premises.

VI.

That on or about the 15th day of August, 1913, the above-named defendants, with a gang of men and piles, entered upon the property above described and with a pile-driver upon the lands and premises in front of Blocks R. S and T, and upon the ground so occupied and claimed by the plaintiff, its grantors and predecessors in interest on and prior to the 17th day of May, 1884, and began the erection of a series of posts or piles beginning immediately in front of

Blocks R, S and T and continued to drive the said piles and posts with said gang of men and threatened to take possession and control of all of the tide lands so owned and occupied by this plaintiff since [723] the 6th day of March, 1881, and under the provisions of the Act of Congress of May 17th, 1884, until restrained by an order of this Court, and the defendants threatened to and now threaten to obstruct plaintiff's right of way out to deep water in Gastineau Channel and threatened to further construct upon said piling and posts after capping the same, a platform and wharf or gridiron and will occupy and possess and control all of the waterfront in front of Blocks R, S and T in said town of Juneau and thus deprive the plaintiff of the use and occupancy of the said waterfront property for the purposes mentioned herein and completely obstruct and shut the plaintiff out of the said property and exclude it from the same and from its right to use, occupy and possess the same and from its right of way to deep water of Gastineau Channel.

VII.

That all of said acts and threatened acts and doings of the said defendants are against the will, and consent of the plaintiff; that plaintiff notified the defendants of its rights in the premises, and to refrain from doing and committing the wrongs complained of and requested the defendants to refrain from further prosecution of said work and no further to trespass upon plaintiff's property; but the defendants will continue the work and improvements aforesaid unless restrained by this Honorable

Court; that the said acts and matters complained of and the placing of said obstructions upon the property claimed by the plaintiff in this action, will render the same valueless and useless and of great and irreparable damage to this plaintiff.

VIII.

From the foregoing Findings of Fact, the Court draws the following: [724]

Conclusions of Law.

(I)

That the plaintiff, its grantors and predecessors in interest, on the 17th day of May, 1884, actually used, occupied and claimed the wharf site and the whole thereof located by M. W. Murray in 1881, situated in the Town of Harrisburg, now Juneau, Alaska; that the plaintiff, its grantors and predecessors in interest have color of title to said premises; that the plaintiff has never abandoned the same or any part thereof; and that by the terms of the Act of Congress of May 17th, 1884, the plaintiff shall not be disturbed in the possession of the said property or any part thereof.

(II)

That the plaintiff is the owner, save as against the United States, and entitled to the possession of the tide lands lying immediately in front of Blocks O, P, Q, R, S and T, and particularly the 13 feet in front of the southerly 13 feet of Block S, and 100 feet in front of Lots 1 and 2 in Block T, of the Town of Juneau, Alaska, which are within the boundaries of the wharf site located by M. W. Murray on the 6th day of March, 1881.

(III)

That the defendant George E. James has no right, title or interest in and to the property and premises above described.

(IV)

That the defendant, George E. James, threatens to, and will, continue a series of trespasses upon the property above described which will render the same valueless and useless and to the great and irreparable injury to the plaintiff, unless restrained by an order of this Court; that the [725] plaintiff has no plain, speedy, adequate and complete remedy at law; that the doings of the defendant, George E. James, are contrary to equity and good conscience; and that only by an action in equity before this Court for an injunction, can a multiplicity of suits be avoided.

(V)

That the defendant, George E. James, be perpetually enjoined from committing the wrongs complained of, and of placing piling, posts, mudsills or capping in front of the property of the plaintiff, to wit: The tide lands lying immediately in front of Blocks O, P, Q, R, S and T, and particularly the 13 feet in front of the southerly 13 feet of Block S, and 100 feet in front of Lots 1 and 2 in Block T of the Town of Juneau, Alaska, and within the boundaries of the wharf site located by M. W. Murray on the 6th day of March, 1881, and in any way interfering with or disturbing the plaintiff's possession, use and occupancy of said tract of land.

(VI)

That the plaintiff have of, and from, the defend-

ant George E. James, its costs and disbursements herein laid out and expended.

Done in open court this —— day of ——, 1914.

_____,
Judge.

[Endorsed]: Original. No. 1024—A. In the District Court for the District of Alaska, Division No. 1, at Juneau, Pacific Coast Company, a Corporation, Plaintiff, vs. George E. James and Edward Webster, Defendants. Findings of Fact and Conclusions of Law Requested by the Plaintiff, Shackleford & Bayless, Attorneys for Plaintiff. Office, Juneau, Alaska. Due service of a copy of the within is admitted this 25th day of November, 1914. Gunnison & Robertson, Attorneys for Sabino Dortero, Plaintiff. Filed in the District Court, District of Alaska, First Division. Nov. 27, 1914. J. W. Bell, Clerk. By C. Z. Denny, Deputy. [726]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

Number 1024—A.

PACIFIC COAST COMPANY, a Corporation,
Plaintiff,

vs.

GEORGE E. JAMES and EDWARD WEBSTER,
Defendants.

Assignment of Error.

The Pacific Coast Company, a corporation, plaintiff in the above-entitled court and cause, assigns the

following errors committed by the trial court in the trial hereof, and the rendition and entry of the judgment herein, upon which it will rely in the United States Circuit Court of Appeals, for the Ninth Circuit, to wit:

I.

The Court erred in rendering the first Finding of Fact, which is in words and figures as follows, to wit:

“That on the 15th day of April, 1900, the premises in controversy in this suit, to wit:

A certain tract of tide land in the town of Juneau, Alaska, being 113 feet along the line of mean high tide in front of Lots 1 and 2, Block T, and part of Lot 1 in Block S, as follows: that is to say, the full width of Lots 1 and 2, Block T, being 100 feet more or less, and the 13 feet of Lot 1 in Block S, which is contiguous to said 100 feet, and extending from said line of mean high tide the full width of said 113 feet out to the navigable waters of Gastineau Channel, an arm of the North Pacific Ocean,

was vacant, unused, unoccupied, unappropriated land of the United States.”

for the reason that the same is contrary to, and wholly unsupported by the evidence. [727]

II.

That Court erred in rendering the second Finding of Fact, which is in words and figures as follows, to wit:

“That on said date defendant George E. James, being then a citizen of the United States

and a resident of Alaska, claimed, took possession of and entered into the use, occupation and enjoyment of said tract, and improved same by clearing the same of driftwood and boulders, and rendering it suitable as a place for loading and unloading, repairing and otherwise handling rafts, lighters, boats scows, barges and other craft, and began and, until the commencement of this suit continued, to use and occupy the same in and for said purposes, and in connection with the lumber and sawmill business then and at all times since conducted by him. That in the year 1906, and again in 1908, 1911 and 1912, said defendant made and constructed thereon permanent structures, to wit, gridirons, platforms, and approaches from the street to said platforms and gridirons, to facilitate the said purposes for which said premises were used and occupied by him, which said use, occupation and claim have at all times been open, notorious, continuous and without let, hinderance or interruption until the doing of the matters and things complained of in the answer herein.”

for the reason that the same is contrary to and wholly unsupported by the evidence.

III.

The Court erred in rendering the third Finding of Fact, which is in words and figures as follows, to wit:

“That on or about the 17th day of August, 1913, plaintiff, Pacific Coast Company, a corporation, without right, and against the will and

consent of said defendant, entered upon the said tract, and began, and threatened to continue, and unless restrained by law will continue, to drive piles and erect structures in front of, that is, on the seaward side of, the structures and improvements of the defendant in such manner as to block and cut off said defendant's access and communication between his said structures and the deep and navigable waters of Gastineau Channel and in such a manner as to render said premises valueless and useless to said defendant for the purposes aforesaid."

for the reason that the same is contrary to and wholly unsupported by the evidence.

IV.

The Court erred in rendering the fourth Finding of Fact, which is in words and figures as follows, to wit: [728]

"That said acts and threatened acts of plaintiff do and will constitute a continued trespass, and will cause defendant irreparable loss and damage, for which he will have no adequate remedy at law, and will render the premises in controversy useless and of no value to defendant for the uses and purpose for which he, said defendant, originally appropriated and used the same and for which he has since used the same."

for the reason that the same is contrary to and wholly unsupported by the evidence.

V.

The Court erred in rendering the fifth Finding of Fact, which is in words and figures as follows, to wit:

“That at the time of the acts complained of by plaintiff, and at the time of the commencement of this suit, plaintiff was the owner of said Lots R, S and T, but that a long time prior to the commencement of this action, by various certain formal conveyances and instruments, it deeded and dedicated to the Municipality known as the Town of Juneau, and to the public use, as a public street and highway, a certain strip of upland, being the westerly portion of said Lots 1 and 2, in Block T, and of Lot 1 in Block S, which said portions so deeded and dedicated abutt upon the line of mean high tide of the waters of said Gastineau Channel and that said plaintiff also deeded and dedicated to said town, certain other portions of said Lots 1 and 2, in Block T, and of Lot 1 in Block S, as public streets and alleys; that said upland so deeded and dedicated to said town and the public use, as public streets, highways and alleys, was duly accepted by said town for said purposes and for a long time theretofore was, and at all times thereafter has been, used as such public streets, highways and alleys by the general public, and that since said dedications and use plaintiff has not been, and is not now, the owner of any upland upon which the tide land in controversy abutts.”

for the reason that the same is contrary to and wholly unsupported by the evidence.

VI.

The Court erred in concluding as a matter of law “that defendant, George E. James, is entitled to a

decree adjudging him to be the owner of said tract of tide land and enjoining plaintiff from in any manner interfering with the full enjoyment and use by defendant of his said property.” [729]

VII.

The Court erred in refusing the request of the plaintiff to make the following Finding of Fact:

That the plaintiff, the Pacific Coast Company, is a corporation duly organized and existing, and qualified to do, and doing business as a corporation in the Territory of Alaska, and that it has heretofore paid its annual license fees for the years 1913 and 1914.

VIII.

That Court erred in refusing the request of the plaintiff to make the following Finding of Fact:

That on the 6th day of March, 1881, M. W. Murray being a citizen of the United States over the age of twenty-one years, and a resident of the Town of Harrisburg, now Juneau, Alaska, entered upon, located and claimed and entered into the actual possession and occupation of a certain piece or parcel of land for building and wharf purposes, the same being unappropriated, vacant public land and being free and open to location and appropriation, which said piece or parcel of land is described as follows:

“Located, lying and being about one-eighth ($\frac{1}{8}$) of a mile easterly from the Town of Harrisburg, now Juneau, on the seashore, the center line being marked by a blazed tree and notice and a large boulder near low-water mark in line

S. 25° W. Magnetic, courses, and distances are as follows:

Commencing at stake and mound of stone 1st N. 25° E. 600 ft.; thence 2d 65° E. 600 ft.; thence 3d S. 25° W. 600 ft. to stake and mound of stone at low-water mark and thence 4th N. 65° W. 60° ft. along the water line to the place of beginning.”

all of which said land borders and abuts upon Gastineau Channel, which is a navigable arm of the North Pacific Ocean in the District of Alaska.

IX.

The Court erred in refusing the request of the plaintiff to make the following Finding of Fact: [729½]’

That thereafter and on the 26th day of March, 1881, the miners and citizens of the Town of Rockwell, now Juneau, Alaska, in meeting assembled, unanimously adopted, endorsed, and approved the following resolution:

“Whereas, Captain M. W. Murray has located outside and to the east of the city, a wharf site, and proposes at earliest opportunity, to build a wharf and warehouse for the accommodation of vessels and steamers and for the benefit of all citizens alike, it is the sense of the meeting that we should encourage such an enterprise; therefore, it is hereby ‘Resolved that the miners and citizens of the district and city, recognizing that such improvements would be a public benefit, hereby accept, endorse and recognize the rights of Capt. Murray, and will by our future acts en-

dorse and recognize his rights to the said wharf site and improvements.' ”

X.

The Court erred in refusing the request of the plaintiff to make the following Finding of Fact:

That the said M. W. Murray located, and entered into the possession of the said tract of land above described, and the whole thereof, and in the year 1881 commenced the erection and construction of a certain wharf which was afterwards known as the Carrol-Murray wharf of Juneau, Alaska, and completed the erection and construction of the same in [730] the year 1882. That said wharf erected upon said premises consisted of an approach about 200 feet long, and a face about 60 feet long, by 40 feet wide. That said wharf structure was erected at or about center of said wharf site and extended from the upland on said premises out to deep water of Gastineau Channel. That the said M. W. Murray and his successors in interest constructed other valuable improvements upon said premises, consisting of a warehouse, coal bunkers, and other buildings used for wharf purposes. That from the date of the completion of said wharf down to the year 1894, the said Carrol-Murray wharf was the only wharf in the Town of Juneau, Alaska, at which all sea-going vessels plying the port of Juneau, tied up to. That on account of the limited extent of the face of the said wharf, it was necessary for such vessels to run lines ashore in mooring to said Carrol-Murray wharf. That the said M. W. Murray and his successors in interest, for the purpose of marking and

defining the boundaries of the tract of land above described, and also for the purpose of mooring the said vessels in the manner aforesaid, in the year 1883 drove two piles between high and low water mark, 600 feet apart and 300 feet from the center of the said tract of land. That it was the practice for the said vessels plying the port of Juneau and tying up to the said Carrol-Murray wharf during the period from 1881 to 1894, to run lines ashore to the said two piles or to other permanent objects in the vicinity of the said piles, for the purpose of making the ships fast to the said wharf. That a space of 300 feet on either side of the center of the said wharf site was a necessary and reasonable adjunct to the use [731] and enjoyment of the said wharf and wharf site. That the tide lands and premises, the same being—13 feet in front of the southerly 13 feet of Lot 1 in Block S, and 100 feet in front of Lots 1 and 2 in Block T, of Juneau, Alaska, in dispute in this case were actually used and occupied by the said M. W. Murray and his successors in interest in the manner aforesaid during the period from 1881 until 1894. That in the year 1898 United States patent was issued for the entire uplands of the said premises, and that by mesne conveyances the whole of the said wharf site including said 13 feet of tide lands in front of the southerly 13 feet of Lot 1 in Block S and said 100 feet of tide lands in front of Lots 1 and 2 in Block T, of the Town of Juneau, the premises in dispute, was conveyed to the plaintiff and that the said plaintiff and its grantors and predecessors in interest were, from the 6th day of March,

1881, down to the year 1894, in open, notorious, exclusive and continuous possession, use, and occupation of each and all of the said premises, uplands and tide lands, occupying the same under a *bona fide* claim of ownership and right of possession, and exercising dominion over the tide lands above described and over the right of way out to deep water of Gastineau Channel; and that the said plaintiff and its grantors and predecessors in interest have been since the 6th day of March, 1881, in the open, notorious, exclusive and continuous possession of each and all of the said premises, occupying the same and exercising dominion over the tide lands above described (saving and excepting the tide lands in dispute in this action as herein stated), and over the right of way out to deep water aforesaid, since said date; that the said tide lands lie immediately in front of Blocks O, P, Q, R, S and T in the townsite of Juneau, Alaska. That after 1894 the plaintiff and [732] its predecessors in interest, discontinued the use of the Carrol-Murray wharf as a wharf, but themselves, their agents and tenants actually occupied the improvements placed upon the tide lands, actually occupied the wharf structure and the buildings appurtenant thereto for various purposes, such as a sardine factory, a glove factory, and for other purposes, and the plaintiff, its agents and tenants have continued such use and occupation of the said premises until the present time; that in 1894 the plaintiff and its grantors and predecessors in interest discontinued the actual occupation of the premises in dispute, but that between 1894 and 1900 no other

person occupied said premises; that in the years 1900 and 1901 the lessees and tenants of the plaintiff actually occupied the premises in dispute; that in the year 1905, Charles E. Davidson, as receiver of the Willson-Sylvester Estate, the lessee and tenant of the plaintiff, actually occupied the premises in dispute and erected thereon a certain gridiron, which remained upon said premises for the space of six months or more. That the said plaintiff and its grantors and predecessors in interest have ever since the 6th day of March, 1881, looked after, exercised dominion over and paid taxes on the premises in dispute and have never had the intention to abandon the said wharf site or any part thereof. That on May 17th, 1884, the plaintiff, its grantors and predecessors in interest,, has in good faith, claimed the claimed the whole of said wharf site including the premises in dispute herein and from said date continued in such actual use, occupation, and possession, until 1894, when the Carrol-Murray wharf was discontinued as a wharf, but that ever since prior to May 17th, 1884, the plaintiff, its grantors and predecessors in interest, has in good faith, claimed the possession and right of possession, use and occupation of the premises in dispute under location notice, deeds, and patents. [733]

XI.

The Court erred in refusing the request of the plaintiff to make the following Finding of Fact:

That on or about the 15th day of April, 1900, the defendant George E. James, first landed lumber and rafts on a portion of the premises located by M. W.

Murray on March 6th, 1881, which is known as the Carrol-Murray wharf site, and which has been conveyed to the plaintiff by mesne conveyances (and which premises have heretofore been subdivided into Blocks O, P, Q, R, S and T); that said defendant from said date down to the date of the institution of this action has used said portion of tide lands of the Carrol-Murray wharf site, which portion is described as follows:

Extending along the line of *mesne* high tide a distance of about 100 feet in front of Lots 1 and 2 in Block T, and 13 feet in front of the southerly 13 feet of Lot 1, in Block S in the Town of Juneau, Alaska, and thence from the said line of mesne high tide out to the deep and navigable waters of Gastineau Channel.

That the use by said defendant of said premises consisted in the landing of rafts and scows of lumber; that said defendant has placed no monuments of any kind upon said premises to indicate the boundaries thereof; that the landing of said scows and rafts has been casual and intermittent; that the use of said premises by said defendant has not been exclusive; that the claim of title of the defendant in and to said premises is not based on any location notice, deed, or other written instrument; that said defendant has used and occupied said premises by permission from the plaintiff; that said defendant made no claim of ownership in and to said premises adverse to the plaintiff until a short time before the institution of this action; that said defendant some time in [734] the year 1905, erected a small

gridiron on the premises herein mentioned; that prior to said date the defendant had erected no structure nor improvements of any kind upon said premises; that in the year 1906 the defendant constructed a gridiron upon said premises and in the year 1907 erected an easterly approach therefrom to lower Franklin Street; that in the year 1912 the defendant erected a westerly approach therefrom to lower Franklin Street; and that defendant has paid no taxes on said premises.

XII.

The Court erred in refusing the request of the plaintiff to make the following Finding of Fact:

That on or about the 15th day of August, 1913, the above-named defendant, with a gang of men and piles, entered upon the property above described and with a pile-driver upon the lands and premises in front of Blocks R, S and T, and upon the ground so occupied and claimed by the plaintiff, its grantors and predecessors in interest on and prior to the 17th day May, 1884, and began the erection of a series of posts or piles beginning immediately in front of Blocks R, S and T, and continued to drive the said piles and posts with said gang of men and threatened to take possession and control of all of the tide lands so owned and occupied by this plaintiff since the 6th day of March, 1881, and under the provisions of the Act of Congress of May 17th, 1884, until restrained by an order of this Court, and the defendants threatened to and now threaten to obstruct plaintiff's right of way out to deep water in Gastineau Channel and threatened to further con-

struct upon said piling and posts after capping the same, a platform and wharf or gridiron and will occupy and possess and control all of the waterfront in front of Blocks R, S and T in said Town of Juneau, and thus deprive the plaintiff of the use and occupancy of the said waterfront property for the purposes mentioned [735] herein and completely obstruct and shut the plaintiff out of the said property and exclude it from the same and from its right to use, occupy and possess the same and from its right of way to deep water of Gastineau Channel.

XIII.

The Court erred in refusing the request of the plaintiff to make the following Finding of Fact:

That all of said acts and threatened acts and doings of the said defendants are against the will, and consent of the plaintiff; that plaintiff notified the defendants of its rights in the premises and to refrain from doing and committing the wrongs complained of and requested the defendants to refrain from further prosecution of said work and no further to trespass upon plaintiff's property; but the defendants will continue the work and improvements aforesaid unless restrained by this Honorable Court; that the said acts and matters complained of and the placing of said obstructions upon the property claimed by the plaintiff in this action, will render the same valueless and useless and of great and irreparable damage to this plaintiff.

XIV.

The Court erred in refusing the request of the plaintiff to make the following Conclusion of Law:

That the plaintiff, its grantors, and predecessors in interest, on the 17th day of May, 1884, actually used, occupied, and claimed the wharf site and the whole thereof located by M. W. Murray in 1881, situated in the Town of Harrisburg, now Juneau, Alaska; that the plaintiff, its grantors, and predecessors in interest, have color of title to said premises; that the plaintiff has never abandoned the same [736] or any part thereof; and that by the terms of the Act of Congress of May 17th, 1884, the plaintiff shall not be disturbed in the possession of the said property or any part thereof.

XV.

The Court erred in refusing the request of the plaintiff to make the following Conclusion of Law:

That the plaintiff is the owner, save as against the United States, and entitled to the possession of the tide lands lying immediately in front of Blocks O, P, Q, R, S and T, and particularly the 13 feet in front of the southerly 13 feet of Block S, and 100 feet in front of Lots 1 and 2 in Block T, of the town of Juneau, Alaska, which are within the boundaries of the wharf site located by M. W. Murray on the 6th day of March, 1881.

XVI.

The Court erred in refusing the request of the plaintiff to make the following Conclusion of Law:

That the defendant George E. James, has no right, title or interest, in and to the property and premises above described.

XVII.

The Court erred in refusing the request of the

plaintiff to make the following Conclusion of Law:

That the defendant, George E. James, threatens to and will, continue a series of trespasses upon the property above described which will render the same valueless and useless and to the great and irreparable injury to the plaintiff, unless restrained by an order of this Court; that the plaintiff has no plain, speedy, adequate, and complete remedy at law; that the doings of the defendant, George E. James, [737] are contrary to equity and good conscience; and that only by an action in equity before this Court for an injunction, can a multiplicity of suits be avoided.

XVIII.

The Court erred in refusing the request of the plaintiff to make the following Conclusion of Law:

That the defendant, George E. James, be perpetually enjoined from committing the wrongs complained of, and of placing piling, posts, mudsills, or capping, in front of the property of the plaintiff, to wit: The tide lands lying immediately in front of Blocks O, P, Q, R, S and T, and particularly the 13 feet in front of the southerly 13 feet of Block S, and 100 feet in front of Lots 1 and 2, in Block T of the Town of Juneau, Alaska, and within the boundaries of the wharf site located by M. W. Murray on the 6th day of March, 1881, and in anyway interfering with or disturbing the plaintiff's possession, use and occupancy of said tract of land.

XIX.

The Court erred in refusing the request of the plaintiff to make the following Conclusion of Law:

That the plaintiff have of, and from, the defendant

George E. James, its costs and disbursements herein laid out and expended.

XX.

Wherefore, the plaintiff prays that on account of the errors hereinbefore mentioned and others manifest of record herein, that the judgment of the District Court for the District of Alaska, Division Number One, be reversed and the cause remanded, with instructions to enter judgment in favor of the plaintiff herein.

SHACKLEFORD & BAYLESS,

Attorneys for Plaintiff. [738]

[Endorsed]: Originol. No. 1024—A. In the District Court for the District of Alaska, Division No. 1, at Juneau. Pacific Coast Company, a Corporation, Plaintiff, vs. George E. James and Edward Webster, Defendants. Assignment of Error, Schackleford & Bayless, Attorneys for Plaintiff. Office, Juneau, Alaska. Service of a copy of the within is admitted this 6th day of February, 1915. R. E. Robertson, of Attorney for Deft. James. Filed in the District Court, District of Alaska, First Division. Feb. 8, 1915. J. W. Bell, Clerk. By ———, Deputy. [739]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1024—A.

PACIFIC COAST COMPANY, a Corporation,
Plaintiff,

vs.

GEORGE E. JAMES and EDWARD WEBSTER,
Defendants.

Citation.

The President of the United States, to George E. James and Edward Webster, Defendants, and Their Attorneys, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held in the City of San Francisco, in the State of California, within thirty (30) days from the date of this writ, pursuant to an appeal filed in the clerk's office of the *District for the District of Alaska, Division Number One, at Juneau*, wherein Pacific Coast Company is Appellant, and you are Appellees, to show cause if any there be, why the judgment in said appeal mentioned, should not be corrected, and speedy justice done to the said parties in that behalf.

WITNESS the Honorable EDWARD DOUGLAS WHITE, Chief Justice of the Supreme Court of the United States of America, this 8th day of February, 1915, and of the Independence of the United States

the one hundred and thirty-ninth.

ROBERT W. JENNINGS,

Judge. [740]

Service of a copy of the within is admitted this 8th day of February, 1915.

R. E. ROBERTSON,

Of Attorney for Defendant James.

[Endorsed]: Original. No. 1024—A. In the District Court for the District of Alaska, Division No. 1, at Juneau. Pacific Coast Company, a Corporation, Plaintiff, vs. George E. James and Edward Webster, Defendants. Citation. Filed in the District Court, District of Alaska, First Division. Feb. 8, 1915. J. W. Bell, Clerk. By —————, Deputy. [741]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1024—A.

PACIFIC COAST COMPANY, a Corporation,
Plaintiff,

vs.

GEORGE E. JAMES and EDWARD WEBSTER,
Defendants.

**Exceptions [to Findings of Fact and Conclusions of
Law, etc.].**

The plaintiff, the Pacific Coast Company, a corporation, excepts to the Findings of Fact and Conclusions of Law rendered by the Court herein on the 27th day of January, 1915, and to the whole and particularly to the findings Nos. 1, 2, 3, 4 and 5 thereof, and to the Conclusions of Law therein.

The plaintiff further excepts to the judgment rendered by the said Court herein on the 27th day of January, 1915, and to each and every part thereof.

The plaintiff further excepts to the refusal of said Court to find as facts in this case and as Conclusions of Law thereon, the proposed Findings of Fact and Conclusions of Law tendered by the said plaintiff, which are on file herein.

All the foregoing exceptions were taken and allowed this 27th day of January, 1915, at the time of said refusals, and of making the findings in the case.

ROBERT W. JENNINGS,

Judge.

[Endorsed]: Original. No. 1024—A. In the District Court for the District of Alaska, Division No. 1, at Juneau. Pacific Coast Company, a Corporation, Plaintiff, vs. George E. James and Edward Webster. Defendants. Exceptions. Shackleford & Bayless, Attorneys for Plaintiff. Office, Juneau, Alaska. Due service of a copy of the within is admitted this 28th day of January, 1915. Gunnison & Robertson, per R. A. G., Attorney for Deft. George E. James. Filed in the District Court, District of Alaska, First Division. Jan. 28, 1915. J. W. Bell, Clerk. [742]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1024—A.

PACIFIC COAST COMPANY, a Corporation,
Plaintiff,

vs.

GEORGE E. JAMES and EDWARD WEBSTER,
Defendants.

Stipulation [Extending Return Day of Citation].

WHEREAS, in the citation issued out of the above-entitled court in this cause, and dated February the 8th, 1915, the above-named defendants were cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit to be held in the City of San Francisco. in the State of California, within thirty (30) days from said date, and

WHEREAS, it has been and is impossible to have prepared, filed and settled, plaintiff's Bill of Exceptions herein within thirty (30) days from February the 8th, 1915.

IT IS HEREBY STIPULATED AND AGREED between counsel for the plaintiff and defendants herein, that the return day named in said Citation shall be extended for a period of thirty (30) days from the 8th day of March, 1915, and that the said defendants shall be required to be and appear in said Circuit Court of Appeals within thirty (30) days from the 8th day of March, 1915.

Dated the 5th day of March, 1915.

SHACKLEFORD & BAYLESS,

Counsel for Plaintiff.

GUNNISON & ROBERTSON,

Counsel for Defendants.

[Endorsed]: Original. No. 1024—A. In the District Court for the District of [743] Alaska, Division No. 1, at Juneau. Pacific Coast Company, Plaintiff, vs. George E. James and Edward Webster, Defendant. Stipulation. Shackelford & Bayless, Attorneys for Plaintiff. Office, Juneau, Alaska. Filed in the District Court, District of Alaska, First Division. Mar. 6, 1915. J. W. Bell, Clerk. By C. Z. Denny, Deputy. Due service of a copy of the within is admitted this 5 day of March, 1915. Gunnison & Robertson, Attorney for Deft. Geo. E. James. [744]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1024—A.

PACIFIC COAST COMPANY, a Corporation,
Plaintiff,

vs.

GEORGE E. JAMES and EDWARD WEBSTER,
Defendants.

Order Extending Return Day of Citation.

This matter coming on for hearing upon the stipulation of counsel for the respective parties above named, dated March 5th, 1915, and it appearing to

the Court that it has been and is impossible to have prepared, filed and settled, plaintiff's Bill of Exceptions herein, within thirty (30) days from February 8th, 1915, the said stipulation is approved. and

IT IS HEREBY ORDERED that the return day named in said Citation shall be extended for a period of thirty (30) days from the 8th day of March, 1915, and that the above-named defendants shall be required to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit to be held in the City of San Francisco in the State of California, within thirty (30) days from the 8th day of March, 1915.

Done in open court this 6th day of March, 1915.

ROBERT W. JENNINGS,

Judge.

[Endorsed]: Original. No. 1024—A. In the District Court for the District of Alaska, Division No. 1, at Juneau. Pacific Coast Company, Plaintiff, vs. [745] George E. James and Edward Webster, Defendants. Order extending return day of citation. Shackleford & Bayless, Attorneys for Plaintiff. Office, Juneau, Alaska. Filed in the District Court, District of Alaska, First Division, Mar. 6, 1915. J. W. Bell, Clerk. By C. Z. Denny, Deputy. [746]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1024—A.

PACIFIC COAST COMPANY, a Corporation,
Plaintiff,

vs.

GEORGE E. JAMES and EDWARD WEBSTER,
Defendants.

Amended Praecipe for Transcript on Appeal.

J. W. Bell, Clerk of the District Court for the District of Alaska, Division No. 1, at Juneau.

Dear Sir: Please prepare the transcript of the record on appeal in the above-entitled case and certify the following papers, to wit:

1. Complaint.
2. Answer.
3. Reply.
4. Opinion by Judge Jennings.
5. Findings of Fact and Conclusions of Law.
6. Judgment.
7. Petition for Allowance of Appeal and Order Granting the Same.
8. Bond on Appeal.
9. Bill of Exceptions Including Transcript of Testimony, Plaintiff's Request for Findings and Conclusions.
10. Assignment of Errors.
11. Citation and Return on Same.
12. Plaintiff's Exceptions.

13. Certificate of the Judge of the District Court Settling Record on Appeal.
14. All Exhibits.
15. Stipulation Extending Time in Citation.
16. Order Extending Time in Citation.
17. Depositions of Lloyd, Hunter, Mitchell & Harper.
18. This Praecipe.

When so prepared, you will kindly transmit this record to the clerk of the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco.

SHACKLEFORD & BAYLESS,

Attorneys for Plaintiff.

[Endorsed]: Original. No. 1024—A. In the District Court for the District of Alaska, Division No. 1, at Juneau. Pacific Coast Company, Plaintiff, vs. George E. James and Edward Webster, Defendants. Amended Praecipe for Transcript on Appeal. Shackleford & Bayless, Attorneys for Plaintiff. Office: Juneau, Alaska. [747] Due service of a copy of the within is admitted this 15th day of March, 1915. Gunnison & Robertson, Attorneys for Deft. Geo. E. James. Filed in the District Court, District of Alaska, First Division. Mar. 15, 1915. J. W. Bell, Clerk. [748]

**[Certificate of Clerk U. S. District Court to
Transcript of Record.]**

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1024—A.

PACIFIC COAST COMPANY, a Corporation,
Plaintiff,

vs.

GEORGE E. JAMES and EDWARD WEBSTER,
Defendants.

I, J. W. Bell, Clerk of the District Court for the District of Alaska, Division No. 1, do hereby certify that the foregoing and hereto attached seven hundred and forty-eight pages of typewritten and other matter, numbered from 1 to 748, both inclusive, constitutes a full, true and correct copy of the record, and the whole thereof, prepared in accordance with the praecipe of the appellant, filed herein and made a part hereof, in Cause No. 1024—A, entitled Pacific Coast Company, a Corporation, Plaintiff and Appellant, vs. George E. James and Edward Webster, Defendants and Appellees.

I further certify that the said record is by virtue of order allowing appeal and the citation issued herein and made a part hereof, and the return in accordance therewith.

I further certify that the said record has been prepared by me in my office, and the costs of preparation, examination and certificate amounting to

Three Hundred Thirty-six and 60/100 Dollars (\$336.60) have been paid to me by Messrs. Shackelford & Bayless, attorneys for plaintiff and appellant.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of the above-entitled court, this 24th day of March, 1915.

[Seal]

J. W. BELL,

Clerk of District Court, Dist. of Alaska, Division
No. 1. [749]

[Endorsed]: No. 2596. United States Circuit Court of Appeals for the Ninth Circuit. Pacific Coast Company, a Corporation, Appellant, vs. George E. James and Edward Webster, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the District of Alaska, Division No. 1.

Filed April 1, 1915.

FRANK D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

